

October 20, 2003

Steven M. Vajs  
Director, Risk Management Division  
Financial Management Service  
U.S. Department of the Treasury  
Room 423  
401 14<sup>th</sup> Street, SW  
Washington, DC 20227

Via E-Mail

**Re: 31 CFR Part 210 -- Government Participation in the Automated Clearing House ("ACH") Network**

Dear Mr. Vajs:

Bank One Corporation ("Bank One") appreciates the opportunity to comment on the Financial Management Service's ("FMS") proposal to amend 31 CFR Part 210 in order to address the circumstances under which checks presented or delivered to government agencies may be converted to ACH debit entries and other issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. Bank One Corporation ([www.bankone.com](http://www.bankone.com)) is the nation's sixth-largest bank holding company, with assets of nearly \$300 billion. Bank One currently has more than 52 million credit cards issued, nearly 7 million retail households, and over 20,000 middle market customers. It also manages \$171 billion of clients' investment assets. Bank One conducts its banking business through Bank One, NA, Bank One, Delaware, NA and other affiliated national banks and operating subsidiaries, is the second largest U.S. merchant processor of credit card purchases and the largest issuer of Visa cards in the world.

Bank One does not believe that FMS should amend 31 CFR Part 210, since doing so will create inconsistencies with the Operating Rules of the National Automated Clearing House Association ("NACHA Rules"). While Bank One understands the goal FMS is trying to accomplish, Bank One does not advise creating more inconsistencies between the rules that apply to Federal agencies and the NACHA Rules. Bank One believes the payment industry, as well as consumers and businesses, would benefit if a consistent set of rules existed regarding check truncation, that is, if FMS adopted the NACHA Rules as proposed and ultimately adopted by NACHA. Any differences between the NACHA Rules and the Rules by which Government transactions are processed may create confusion on the part of banks and commercial and consumer customers, increase the burdens on and costs incurred by financial institutions, and increase the risk of fraud. Therefore, Bank One strongly encourages FMS to collaborate with NACHA to design changes to the NACHA Rules that would facilitate FMS' goals.

Following is Bank One's response to FMS' specific requests for comment:

- 1. Does the proposed accounts receivable disclosure strike the appropriate balance between the need for a shorter notice and the need to ensure that consumers understand what is happening to their checks? Is the wording for the proposed accounts receivable disclosure clear and understandable?**

Bank One believes that the proposed accounts receivable disclosure strikes the appropriate balance between the need for a shorter notice and the need to ensure that consumers understand what is happening to their checks. Bank One also believes that FMS' wording for the proposed accounts receivable disclosure is both clear and understandable.

Bank One believes that the Government should notify the customer, as part of the standard ARC notice, that the Government agency will charge the customer a fee for insufficient funds and that the fee will be collected electronically through a transaction separate from the ARC transaction. Currently, most merchants collect any fees for insufficient funds directly from the consumer during the collection process. Bank One believes that, until customers understand that this fee will be imposed and that it will be imposed electronically, financial institutions will spend significant time and resources educating their customers about the imposition of the fee. In addition, at least until customers are familiar with this, the burden and cost to financial institutions of resolving customer inquiries will increase. Bank One expects that consumers would react negatively to the fee being imposed electronically.

Bank One strongly encourages FMS to collaborate with NACHA to design changes to the NACHA Rules to allow for such fees to be processed. Also, with a general rollout to the whole ACH community, NACHA and its members and constituents could more effectively communicate and educate those who may be affected.

- 2. In situations where it is not possible to scan and return voided checks as required under the POP check conversion rules, do you agree that the most reasonable approach would be to convert such checks under the accounts receivable check conversion rules?**

In situations where it is not possible for a government agency to scan and return voided checks as required under the POP check conversion rules, Bank One does not believe that the most reasonable approach would be to convert such checks under the accounts receivable check conversion rules. Bank One encourages FMS to consider technology solutions or other alternatives that would allow agencies to comply with the NACHA rules in these particular situations.

In addition to the inconsistencies that would be created between the Federal rules and the NACHA Rules and the challenges arising from that, truncation of these items could result in difficulties for financial institutions in processing corporate transactions. Many bank systems that are not currently integrated would need to be integrated. For example, banks may not have the capability to run converted checks through their commercial positive pay systems. NACHA is currently working on establishing methods to accomplish business check truncation. FMS should work with NACHA to establish these new methods and implement

such truncation concurrently with NACHA's implementation of new rules to facilitate these types of payments.

Moreover, Bank One is concerned about other aspects of the proposal. The NACHA Rules require POP checks to be scanned at the time of presentment, in part, as a risk mitigation measure. If checks are not scanned at the time of presentment, but are instead transported and later converted using key entry, the risk of both fraud and error are likely to substantially increase.

Bank One is also concerned that if FMS uses a CCD code for business transactions, as proposed, banks' systems might not recognize an item as a truncation item even if their ACH and check systems were able to communicate. FMS should be using an SEC Code that identifies an entry as a check conversion item. FMS should work with NACHA to develop rules to allow the use of ARC or a new SEC Code for truncating corporate items that do not otherwise meet the requirements of an ARC or POP transaction.

Finally, financial institutions are concerned about moving forward with creating new transaction types until they are able to assess and minimize the associated risks. As the number of SEC Codes has increased, the instances of fraud have increased. If a new SEC Code is created to truncate more unusual items, or FMS uses SEC Codes intended for other transaction types, financial institutions and their customers could face a greater risk of fraud.

**3. What is your opinion regarding the FMS' proposal to eliminate the regulatory prohibition against converting to ACH debit entries certain types of payment instruments that are commonly received at lockboxes and points of purchase?**

For many of the reasons set forth above, Bank One believes that it is critical that payment instruments such as money orders, traveler's checks, certified bank checks and credit card checks are not converted to ACH debit entries at this time. The risks associated with the conversion of these types of payment instruments is higher than with other items. Since these items are often used by customers to make purchases or to get cash back, and they are often substantially larger dollar items than consumer checks, the likelihood of abuse and the consequences of fraud are higher than with consumer and business checks.

Moreover, because the issuer of the payment instrument is a third party (ie: a financial institution), the payment instrument is drawn on an account controlled by the third party, not on an account controlled by the consumer or business initiating the payment. Since the issuer will not receive notice that an item will be truncated, and the consumer or business initiating the payment will not have legal authority from the issuer to authorize the conversion of the item, the conversion of the item will not be properly authorized, even under FMS' proposed rules.

Bank One recognizes that it is difficult to identify or outsort some of these items when they are received at lockboxes and points of purchase, but Bank One feels the operational burden to the agencies of sorting these items and processing them separately is far outweighed by the risk of fraud if these items are used as source documents to originate ACH debit entries.

Banks already do sort these items and process them separately on a daily basis. Bank One believes that these payment instruments should instead be converted pursuant to the Check Clearing for the 21<sup>st</sup> Century Act, when it becomes effective.

- 4. Do you think that agencies should be allowed to originate an ACH debit entry in order to collect a service fee related to an RCK entry if notice of the fee is given to the Receiver before the agency accepts the Receiver's check?**

Bank One does not believe that agencies should be allowed to originate an ACH debit entry in order to collect a service fee related to an RCK entry when it is not permitted under the NACHA Rules, even if notice of the fee is given to the Receiver before the agency accepts the Receiver's check. If agencies were allowed to do this, it would have a negative customer impact, both from a financial and an awareness perspective. If a customer were to have insufficient funds in its account to cover a transaction and a financial institution were to debit the government's service fee from the account as a separate transaction, it is likely that both the original entry and the service fee could be returned. As a result, the customer could be charged additional service fees by its financial institution, as well as the agency, and could also have subsequent transactions returned to its account. Bank One expects that consumers would react negatively to the fee being imposed.

Currently, most merchants collect any fees for insufficient funds directly from the consumer during the collection process. If agencies were allowed to originate an ACH debit entry in order to collect a service fee related to an RCK entry, it would cause confusion and result in an increase in customer inquiries and disputes, increasing the costs and burdens to the private sector. Bank One believes that, until customers understand that this fee will be imposed and that it will be imposed electronically, financial institutions will spend significant time and resources educating their customers about the imposition of the fee and significant time and expense researching claims of unauthorized debits. In addition, the cost to financial institutions of resolving customer inquiries will increase.

Finally, if the agencies were to collect the service fee electronically, Bank One believes that a separate transaction code should be used that identifies the entry as a fee. This would help promote customer awareness and understanding.

## **Section B**

- 1. Do you believe that financial institutions should be required to return benefit payments using an R14 or R15 code, as appropriate, if the financial institution is aware that the recipient is deceased?**

Bank One is not opposed to using the R14 or R15 code if it is aware of the reason why an account is being closed. Currently, most financial institutions do not differentiate reasons for closing an account. Financial institutions would be required to make significant procedural changes and systems enhancements in order to track the reason that an account is being closed. If financial institutions were required to reprogram their systems, significant time

and resources would be required. This would be a very cumbersome procedure and Bank One does not believe the benefits outweigh the burdens.

- 2. Should FMS amend Part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability?**

Bank One believes that the FMS should amend Part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability. Bank One agrees that it is not equitable to impose liability on financial institutions when no loss of public funds exists because the agency that certified the payment has determined that the payment was properly payable, notwithstanding its issuance following the recipient's death. Bank One believes that this exception would be practical and also favorable to financial institutions.

- 3. Do you believe that financial institutions should be required to contact paying agencies in the event financial institutions are made aware that a Federal payment has been misdirected? If so, how could this notice to agencies be most conveniently and effectively provided by financial institutions?**

Bank One does not believe that financial institutions should be required to contact paying agencies in the event financial institutions are made aware that a Federal payment has been misdirected. Bank One believes that the intended payee should be responsible for notifying a paying agency if a Federal payment has been misdirected. Even if a financial institution discovers that a Federal payment was misdirected, the financial institution would not necessarily know which agency to contact or where at a particular agency to send the information for resolution. The intended payee, however, would already know this information, or would be in a better position to find this information.

- 4. Do you believe that Federal agencies should be prohibited from reclaiming any payment that was made more than seven years prior to the date of a notice of reclamation?**

Bank One agrees that Federal agencies should not have an unlimited right to reclaim post-death or post-incapacity payments made to a recipient's account; however, Bank One believes that a seven year time frame is too long. Some financial institutions might not keep records for such a long period of time. In addition, many accounts will have been closed, leaving financial institutions with no recourse to recover the funds.

- 5. Do you support FMS' proposal to revise the wording of subsection 210.11(b)(3)(i) in order to clarify that the information that financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act?**

Bank One supports FMS' proposal to revise the wording of subsection 210.11(b)(3)(i) in order to clarify that the information financial institutions are required to provide in

connection with a reclamation is limited to the information specified in the Financial Privacy Act. If such information were known, Bank One would provide it to the paying agency, upon request.

**6. Do you support FMS' proposal to revise the wording of Section 210.13 to allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly," rather than "immediately?"**

Bank One supports FMS' proposal to revise the wording of Section 210.13 to allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly," rather than "immediately." Bank One agrees that this change would reduce the unnecessary burden on financial institutions of being required to notify an account owner immediately of the receipt of a notice or reclamation.

In summary, while Bank One understands the goal FMS is trying to accomplish, Bank One is deeply concerned about many of FMS' proposed amendments to 31 CFR Part 210. Bank One does not advise creating more inconsistencies between the rules that apply to Federal agencies and the NACHA Rules. Bank One believes the payment industry, as well as consumers and businesses, would benefit if a consistent set of rules existed regarding check truncation. Therefore, Bank One strongly encourages FMS to collaborate with NACHA to design changes to the NACHA Rules that would facilitate FMS' goals.

Bank One appreciates your consideration of the foregoing comments. If you have any questions, please contact the undersigned at 312-732-7491.

Very truly yours,

/s/ Debra N. Rabinowitz

Debra N. Rabinowitz