



October 20, 2003

Mr. Stephen M. Vajas
Director, Risk Management Division
Financial Management Service
U.S. Department of the Treasury
Room 423
401 14th Street, SW
Washington, DC 20227

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

Dear Mr. Vajas

I am writing on behalf of Commerce Bancorp, a \$21 billion multi-bank holding company located in Cherry Hill, New Jersey and its wholly owned subsidiary banks Commerce Bank N.A., Commerce Bank/Pennsylvania N.A., Commerce Bank/Shore N.A., Commerce Bank/North, and Commerce Bank/Delaware N.A.

Commerce Bancorp and its subsidiaries strongly recommend that the Treasury Department's Financial Management Service ["FMS"] defer the proposed changes until the pending legislation [Check 21 Act] is passed and implemented thereby negating the need to convert the government transactions to ACH entries. We have the following comments and concerns on the proposed changes:

A. Check Conversion

The rule changes covered by this proposal provide for the "conversion" of the paper business checks into an ACH CCD [cash concentration or disbursement] entry. It is the conversion that causes the most concern in this proposal. The Check 21 Act that is currently in Congress provides for the electronic presentment of all types of checks including U.S. Treasury checks, without the need to convert them to ACH CCD debits. The FMS proposal specifically excludes Treasury checks. By converting checks to an ACH CCD entry, the transaction loses all of the check processing capabilities inherent to the paper check.

Included in these capabilities, particularly on business or commercial accounts, are such items as Stop Payments, Account Reconciliation services, Controlled Disbursement services and fraud

deterrent services such as Positive Pay and Positive Pay with Payee Verification. Elimination of these service capabilities greatly increases the possibility of fraud and risk of financial loss to both the banks and their customers.

The conversion of checks to ACH entries also takes the transaction out of the jurisdiction of the Uniform Commercial Code and places it under Regulation E which has significantly different provisions.

While the proposed rule change would eliminate the operational burdens that make it difficult for Agencies to participate in the ACH Conversion efforts, use of the ACH for business and additional instruments significantly and negatively impacts banks efforts to provide appropriate and necessary services to both business and retail customers.

A.1 Revised Accounts Receivable Disclosure

The consumer does not readily understand check conversions through the ACH Network. We do not support the proposal to shorten the disclosure but recommend continuing education. The shorter disclosure does not make it clear that a specific government agency is charging the fee rather than the customer's bank.

The recipient of the notice proposed in Appendix C may not be provided to an employee of the business or government issuer with the authority to accept or reject the transaction. The Check 21 Act permits checks to be truncated at any point in the process with the same legal equivalent of the original paper check.

A.2 Expanded Accounts Receivable Check Conversion Applications

NACHA states that POP [point-of purchase] entries require the consumer's written authorization prior for the initiation of the debit under that application. ARC [accounts receivable] transactions do not require the written authorization, but do require previous notification to the consumer prior to the conversion to an electronic debit. In the scenarios described, our concern is that the notification process would be inconsistent with the requirements of NACHA.

As previously stated, we are most concerned with the use of the Standard Entry Class, CCD, used for business checks. Most ACH software packages utilize the Standard Entry Class field to identify transactions for specific processing requirements. Using CCD for converted check transactions presents challenges to participating Financial Institutions to 'trap' these items for special handling as well as providing the required Minimum Description Standards.

A.3 Conversion of Additional Instruments

NACHA requires that notification be provided prior to the conversion of a check to an electronic debit. We are opposed to the fact that items representing obligations of financial institutions

(e.g., cashier's checks, official checks, money orders, traveler's checks, etc.) would be in violation of the notification requirement because the presenter is not be the owner of the instrument. There is also great concern for the potential of increased risk as the result of fraudulent transactions by converting these instruments. The proposed revisions would exponentially increase return requests for unauthorized transactions for the Receiving Depository Financial Institutions.

Additionally, conversion of instruments such as money orders, bank checks and travelers checks make required reconciliation processes extremely difficult to achieve.

A.4 Re-presented Check Entry Service Fees

The proposal to reduce the written authorization requirement of the consumer for a returned check fee to a disclosure is not consistent with existing regulations and processes. Having a deviation for FMS just confuses the consumer and burdens the financial institutions when the consumer questions the charge.

Conclusion

These proposed changes do not promote consistency throughout the financial payments systems. Implementation of such proposals would place a tremendous burden on the financial industry in terms of educating our employees and customers, systems changes, and legal fees to review service and account agreements. In addition, the cost to process such payments and potential abuse for fraud could have the public questioning the viability of the electronic financial system and having them demand paper checks.

Sincerely,

Marianne Mulligan
Vice President
Compliance Risk Management

cc: Richard W. Burke
David Wojcik