



CUNA & Affiliates

Via e-mail 210comments@fms.treas.gov

October 20, 2003

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

Dear Mr. Vajs:

The Credit Union National Association (CUNA) appreciates the opportunity to respond to the notice of proposed rulemaking (“NPRM”) issued by the Treasury Department’s Financial Management Service (“FMS”) regarding proposed changes to the automated clearing house (ACH) rules that govern payments to federal agencies. As a national trade association, CUNA represents more than 90 percent of the nation’s 10,000 state and federal credit unions. This letter was developed under the auspices of CUNA’s Payment Systems Subcommittee, chaired by Terry West, President and CEO of Vystar Credit Union, Jacksonville, Florida. CUNA's position on this proposal is summarized below.

CUNA'S POSITION

- Overall, CUNA opposes this proposal because it creates rules for ACH transactions processed by the federal government that differ significantly from the rules for ACH transactions processed by the private sector. As discussed below, specifically, CUNA opposes Treasury’s proposal to convert items that have traditionally been ineligible for ACH processing and Treasury’s proposal to expand the usage of Accounts Receivable Entry (ARC). These changes would impose inefficiency on the ACH system and create burdens for ACH participants.
- CUNA supports a few, minor provisions in this proposal, but these items do not override the negative impact of the proposal generally or CUNA’s opposition to many of the provisions.

DISCUSSION

The FMS proposes to revise the ACH rules that affect the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. CUNA's comments are discussed below in a section-by-section analysis of the proposal.

Expanded Definition of Business Check

The proposal would add a new definition of business check to include not only any check drawn on a corporate or business account (including third party checks), but also credit card checks, negotiable instruments issued by a financial institution (that is, traveler's checks, cashier's checks, official checks, money orders, etc.) and checks drawn on a state or local government. The expansion of this definition would allow these items to be processed as ACH items.

CUNA opposes this expanded definition of "business check" because it is inconsistent with NACHA's ACH operating rules and would impose hardships on ACH participants. NACHA operating rules prohibit the conversion of items that the proposal seeks to make eligible for conversion. As a result of NACHA's longstanding exclusion of these items, most financial institutions have system limitations and cannot process these items as ACH transactions. Consequently, if Treasury were to convert these items that many financial institutions cannot process, Treasury would experience a sharp increase in ACH returns and receiving financial institutions would experience a sharp increase in exception processing to handle these items. The consequence of this proposed change would be to reduce operational efficiency, which is counter to the intention of the proposal. In order to increase efficiency, we believe Treasury should enact rules that are consistent with those of NACHA.

The FMS proposes to convert all the items created by the expanded definition of business check; however, some of them have unique characteristics that may complicate the conversion process. For instance, credit card checks should be excluded from the definition of business checks for two reasons. They are widely used by consumers, also to ensure accurate posting, these checks must include the full credit card account number and member's name. Other items may present unique challenges as well. Therefore the FMS should refrain from including these items, because their inclusion presents unique problems for financial institutions.

Finally, CUNA urges Treasury not to expand the definition of business check because that would institutionalize the acceptance of unauthorized ACH payments. In its summary in the NPRM, Treasury acknowledges that some business checks will be presented by individuals who are not authorized to approve their conversion to ACH items. Treasury further claims that in these cases its rules provide an adequate framework for a Receiver to pursue recovery of an unauthorized debit to the Receiver's account. CUNA is concerned that Treasury's comments disregard the importance of obtaining proper authorization from a Receiver and, instead, sanction a practice of

accepting unauthorized ACH payments. Practices that result in unauthorized payments will ultimately undermine the integrity and efficiency of the ACH payment system.

For all the reasons stated above, CUNA opposes this provision and the proposal overall.

Expanded Accounts Receivable Check Conversion Applications

The rule would be revised to allow agencies to originate ACH debit entries using checks that are (1) received via the mail; (2) received at a drop box; and (3) delivered in person in circumstances in which it is impossible or impractical for the agency to image and return the check at the time the check is delivered. Under this approach, these checks would be converted using an Accounts Receivable Check (ARC) code (for consumer checks) or a Cash Concentration or Disbursement (CCD) code (for business checks); and the checks would be destroyed, rather than returned to the check writer.

CUNA opposes this provision because the burdens caused by this expanded ARC proposal make it unacceptable. In particular, the conversion of business checks to CCD entries will make it difficult for credit unions to identify these important government entries from typical CCD entries. This will create problems for financial institutions and their members or customers, who cannot identify the item and the original transaction. Moreover, this proposal does not allow financial institutions sufficient time to return unauthorized items because FMS requires processing under CCD, which has a shorter timeframe for returning unauthorized items than ARC items do. This means that the RDFI and the Receiver may not be in a position to make a return decision with respect to an entry's authorization in the proscribed timeframe. Given that Treasury would expand the definition and thereby increase the number of unauthorized items, this exposes financial institutions to new unacceptable liability risks.

Revised Accounts Receivable Disclosure

Currently, agencies that receive checks via the mail or at a drop box may covert those checks to debit entries if the notice set forth at Appendix C of 31 C.F.R. part 210 has been provided to the check writer. The disclosure below must be provided to the Receiver (member/customer) before the check is delivered. A number of agencies have indicated that the standard disclosure set forth in Appendix C is too lengthy to be included on many invoices and remittance documents. Therefore, the rule would shorten the disclosure.

The revised Accounts Receivable Disclosure appears to strike the appropriate balance between the need for a shorter notice and the need to insure that members or customers understand what is happening to their share drafts or checks.

Re-Presented Check Entry Service Fee

Agencies may use a RCK entry to electronically re-present, via the ACH Network, a consumer check that has been returned unpaid due to insufficient funds. Some of the agencies that originate RCK entries also wish to use the ACH Network to collect a

service fee from the issuer of the returned item. The proposal would require that, prior to accepting the Receiver's (member's/customer's) check or source document, the agency disclose to the Receiver (member/customer) that a service fee may be collected. It permits an agency that has the authority to impose such a fee to collect the fee by ACH debit without a written authorization.

This provision would allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry as long as notice of the fee is given to the member of a credit union before the agency accepts the check. NACHA rules already permit this collection of a service fee, so this provision does not present an inconsistency in the rules and we would approve it, if Treasury changes the overall rule as recommended.

Mandatory Use of R15 or R14 Return Reason Code

A financial institution is required to return any federal benefit payment received after the institution learns of the death of the recipient. The rules, however, do not specify what ACH return reason code should be used to make these returns. Under the proposal, financial institutions that learn that an account holder has died would be required to return any subsequent federal benefit payments using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate. The use of an R15 or R14 code would satisfy the receiving depository financial institution's (RDFI's) obligation to notify the agency after learning of the death of a recipient or beneficiary from a source other than notice from the agency. CUNA does not oppose this provision as many credit unions already follow this procedure.

Post-Death Payments to Which Recipient is Entitled

Currently, the rules impose partial or full liability on RDFIs for benefit payments received after the death or legal incapacity of a recipient. This proposal provides that financial institutions would not be held liable for post-death benefit payments to which the recipient was entitled if the agency that certified the disbursement of the payment determines that the recipient or beneficiary is entitled to the post-death payment.

CUNA supports this provision because it would help credit union members. Specifically, it would eliminate inconveniences currently experienced by members or their beneficiaries when a payment is properly made, but the payment must be returned because of the current rules.

Misdirected Federal Payments

The proposal would require a financial institution that becomes aware that a federal benefit payment was misdirected to promptly notify the agency that sent the payment of the error. "Promptly" will normally mean no later than two business days after the error has come to the RDFI's attention. An RDFI that fails to provide the notice may be liable to the federal government for loss resulting from its failure to notify the paying agency. RDFIs may rely on the account number alone in posting payment.

This change would not significantly reduce the burden to financial institutions. The most convenient and effective way to notify the agency of a misdirected payment is through a Notification of Change (NOC). This provides a quick, reliable, and traceable method of notification to the agency. Notification by phone, fax, or mail would be extremely burdensome and inefficient.

Seven Year Limit on Reclamations

Currently, the rules prohibit, subject to one exception, an agency from reclaiming any post-death or post-incapacity payment made more than six years prior to the most recent payment made by the agency to the recipient's account. The proposal would prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation.

CUNA opposes this provision as it would be inconsistent with NACHA's six-year limit on reclamations. Allowing agencies to reclaim six years worth of payments provides the agencies with sufficient time and already leaves financial institutions with a long liability period on these accounts.

Right to Financial Privacy Act

The rules provide that in order to limit its liability in a reclamation, a financial institution must respond to a notice of reclamation by providing the names, addresses, and "other relevant information" regarding account co-owners and other persons who withdrew, or were authorized to withdraw, funds from the recipient's account after the death or legal incapacity of the recipient. The information is used by paying agencies to recover payments. The information that an agency may obtain from a financial institution in connection with a reclamation is limited by the Right to Financial Privacy Act (Act). The proposal would limit the information that agencies may request from financial institutions in accordance with the Act. Under the Act, the information regarding withdrawers and co-owners is limited to the name and address of those individuals.

CUNA believes that Treasury should limit the information that financial institutions are required to provide in connection with reclamations to conform with the Act.

Notification to Account Owners

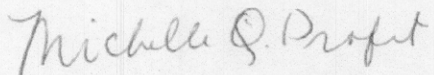
The proposal would allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately," as is currently required. This change is intended to reduce an unnecessary burden on financial institutions.

Most credit unions using ACH already notify their members as soon as possible, this would not significantly reduce the burden on them.

CONCLUSION

For the reasons stated above, CUNA opposes this proposal because the central provisions regarding the definition of business check, also the usage of the ARC and CCD codes would place substantial burdens on credit unions and other financial institutions. Although CUNA believes some other minor provisions in this NPRM would be beneficial, these are not sufficient to override our general objections. If you have any further questions, please contact CUNA's Senior Vice President and Associate General Counsel Mary Dunn or me at 1-800-356-9655.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Q. Profit".

Michelle Q. Profit
Assistant General Counsel