

VIA E-MAIL
October 20, 2003

Stephen M. Vajs
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. Vajs:

The undersigned national associations and professional organizations welcome this opportunity to respond jointly to the notice of proposed rulemaking ("NPRM") issued by the Treasury Department's Financial Management Service ("FMS") regarding proposed changes for Federal agency payments from what is currently supported by the NACHA Operating Rules ("NACHA Rules"). Our comments focus on FMS' proposed changes with respect to electronic conversion of checks presented as payment to Federal agencies. This response supplements any responses to FMS on this NPRM from the individual organizations represented.

Collectively, our organizations have long advocated electronic payments, which are safe, efficient, and cost effective. However, we are deeply concerned with and therefore oppose the proposed changes in the NPRM that would conflict with provisions in the NACHA Rules for the following reasons:

1. Inconsistent Rules will result in inefficiency, confusion, and costs to financial institutions and their customers. A divergent approach by FMS to check conversion from what applies to commercial payments under the NACHA Rules will require financial institutions and many customers to operate two different operational processes for the same types of ACH entries and to rebuild exception handling processes for Federal government entries. It was this costly situation that led FMS to conclude several years ago that, with few exceptions, the NACHA Rules should also apply to Federal agency ACH transactions. FMS' proposal would therefore be a step backward from the perspective of the private sector that would bear the costs of complying with two separate sets of rules for many ACH applications.

Divergence from the NACHA Rules governing check conversion will also confuse users of the payments system with differing authorization procedures for certain applications, and differing eligibility depending on the type of check being used to initiate payment (e.g., business or consumer account, third-party and other checks used for payment but drawn on a separate issuer's account). In a commercial application, a check may not be eligible for conversion, whereas that same check if used to pay a Federal agency would be eligible. Check conversion is a relatively young and

evolving payment system application and now is not the time to introduce to the market widely divergent approaches to authorization and eligibility.

2. Timely payments may be delayed. The operational difficulties processing an entry converted by the government in accordance with FMS' proposed rules will likely result in a significant increase in the number of ACH entries being returned as unable to post. FMS' response is that demand drafts would then be used to collect the outstanding debt. However, these too may be returned by those companies that do not authorize the payment of "unsigned" drafts from their account. In the meantime, several days or more will have elapsed from the time the original check was first received by an agency for payment, subjecting the paying company to late payment penalties and possibly the company's financial institution to a dispute with a good customer.

3. Some of FMS' proposals rest on uncertain legal footing. FMS' proposal to allow the conversion of checks presented to a Federal agency by a consumer or business for payment, but issued by a third party (e.g., a financial institution issuing an official check or cashier's check, a credit card check, a business issuing a money order or traveler's check, a money market check, etc.) raises several legal issues. First, the individual or business using the check for payment does not have the legal authority from the issuing party that owns the account to authorize the conversion of the item. Second, the "authorization" to convert the check is not provided to the Federal agency by the holder of the account on which the check is drawn. Third, the check frequently contains physical security measures (e.g., watermarks, ink types, security threads, etc.) that are circumvented with conversion, and lost with re-creation as a demand draft. Finally, issuers of some classes of items such as money orders will have difficulty proving compliance with state legal requirements that customers receive certain information (e.g., concerning payment of fees, expiration of the money order, etc.) without the original item or a full image of the original item.

For these reasons, our organizations cannot support any proposed changes to 31 CFR Part 210 regarding check conversion that conflict with existing NACHA Rules. Moreover, we would encourage FMS to actively consider the opportunities offered by check truncation as supported by the recently passed *Check Clearing for the 21st Century Act* to realize the same benefits that it seeks with this proposal, which would not result in significant disruption to financial institutions and their customers.

America's Community Bankers

American Bankers Association

Association for Financial Professionals

BITS

Financial Services Roundtable

Independent Community Bankers of America

NACHA – The Electronic Payments Association