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guy.demaertelaere@abnamro.com@abnamro.com on 10/20/2003 05:26:08 PM

Sent by: theresa.custard@abnamro.com

To: 210comments@fms.treas.gov
cc:
Subject: Comments of LaSalle Bank Corporation Re: FMS Proposed ACH Processing Rules Changes

Dear Mr. Vajs:

Please find attached, in PDF, LaSalle Bank Corporation's comments. Please contact me if you have any questions regarding the attached or if you have any problems reading it. Thank you for considering our comments.

Very truly yours,

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(See attached file: 10.20.03 - S. Vajs.pdf)

- 10.20.03 - S. Vajs.pdf

LaSalle Bank Corporation
Member of the ABN AMRO Group

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Carol L. Tenyak
Group Senior Vice President
Deputy General Counsel and Secretary

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

Dear Mr. Vajs:

LaSalle BankCorporation, a direct member of NACHA and the domestic parent company of LaSalle Bank National Association and Standard Federal Bank National Association which are large volume ACH origination and receiving banks, offers the following comments regarding the proposed amendments to 31 CFR Part 210 published in the Federal Register on August 21, 2003, that governs the use of the ACH system by the U.S. Department of the Treasury Financial Management Service ("FMS") and through which FMS applies rules different from the Operating Rules ("ACH Rules") of the National Automated Clearing House Association ("NACHA"). LaSalle acknowledges that under the ACH Rules, the FMS has the right to apply different rules for the transactions it effects via ACH, including any check-conversion transactions, and commends FMS for attempting to further reduce paper processing costs. However, LaSalle strongly opposes the following amendments, except that LaSalle agrees in part with the changes regarding reclamation times frames, and believes they require further consideration, all as further described below:

- Expanding the definition of Business Checks.
- Conversion of Additional Instruments to ACH Debits.
- Originating an ACH debit for the charges imposed by FMS for returned checks.
- Mandatory use of R15 or R14 Return Reason Code.
- Changes regarding the time frame for reclamations.

Expanding the definition of Business Checks.

LaSalle believes FMS has already deviated substantially from the ACH Rules with its 2002 amendment allowing agencies to convert business checks to ACH debits. NACHA, LaSalle and most other banks have already noted a substantial increase in the incidences of fraud in the ACH network and check-conversion transactions in particular, especially involving consumer-related transactions that have resulted in ACH debits against the accounts of our commercial and business customers. To further deviate from the ACH Rules regarding check conversion seems likely to increase the risk of loss for these types of fraudulent transactions. Thus, LaSalle strongly opposes expanding the definition of business checks to include payment scenarios that do not neatly fit within the NACHA-defined categories of check conversion.

Conversion of Additional Instruments to ACH Debits.

LaSalle understands that, in the interest of streamlining its processing of paper items, FMS intends to convert to ACH debits the following paper instruments that the ACH Rules expressly prohibit from being converted: official bank checks, travelers checks, personal money orders (collectively, "Official Checks"), credit card or equity line convenience checks ("Loan Checks"), and third party checks.

However, LaSalle believes the FMS must balance its desire to streamline paper processing against the costs incurred by the rest of the ACH banking community, specifically the Receiving Depository Financial Institutions ("RDFIs") to receive and process these transactions as well as the effects on the RDFIs' customers receiving these ACH debits ("Receivers"). In addition, the proposed use of the ARC and CCD standard entry class codes ("SECs") for these ACH debits is likely to cause confusion for the RDFIs and the Receivers in determining their rights under the ACH Rules and applicable law.

Using the ARC or CCD SECs for Additional Items will cause confusion over rights and responsibilities of the parties to the ACH debits and underlying items under the ACH Rules and applicable state law. The person who receives notice that the Federal agency will convert an item may not be the person authorized to act on the account of the Receiver. Clearly this is true for Official Checks, because the drawer and therefore the Receiver is the RDFI itself (except for Teller Checks) but not the remitter of payment to the agency, and third party checks, for which the drawer of check and the Receiver is again a party other than the remitter of payment to the agency. Given the limited responsibility federal agencies have for their originated ACH debits, pursuant to Part 210, RDFIs may be exposed to unauthorized withdrawal claims under state and federal law from their customers without much recourse against the federal agency or the ODFI acting on its behalf.

In addition Official Checks and Loan Checks are processed differently from regular customer checks. Official Checks are usually for large dollar amounts and as indicated above represent a direct obligation of the drawer bank. They are intended to be equivalents for cash and therefore, banks, including LaSalle, are very careful about how they are issued, processed and reconciled to limit losses related to fraud. Loan Checks are processed through LaSalle's loan system and are not directly tied to its deposit account system. Moreover, Official Checks and Loan Checks are drawn off accounts that are not set up to receive ACH debits and usually issued employing the latest fraud prevention features for such types of checks. For LaSalle, and probably most other RDFIs, to adapt its systems and procedures to accept and reconcile ACH debits in place of Official Checks or Loan Checks will require substantial effort in terms of programming, documentation and training, all at significant costs.

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While FMS has, to some degree, acknowledged the above issues, its solution seems unreasonable and unfair. To allow the ACH debits to be returned, and then even if returned, create paper drafts of these items, because the originals would have been destroyed when converted to ARC or CCD transactions, and use the regular check clearing process to obtain payment of the paper drafts. In the first place, FMS would unnecessarily tax the resources of the entire ACH network because it expects many if not most of these items to be returned by RDFIs. Secondly, by then sending paper drafts of the items returned FMS would defeat the fraud prevention features that could not be reproduced from an image of the original item which could lead to more losses for RDFIs regarding such items and/or greater costs to enhance systems and procedures to safeguard against such losses. Thirdly, FMS has indicated that the rest of the industry should not be entitled to follow the same practice for Treasury-issued checks. Finally, FMS' proposed use of paper drafts is a form of check truncation and as such, LaSalle believes FMS should only truncate checks to the extent permitted under wait for the "Check 21" legislation (once it becomes effective) so that all parties can adapt their systems and follow the same rules regarding check truncation.

In short, LaSalle understands that this part of the FMS proposal would eliminate an inconvenience to Federal agencies of having to identify and isolate for exception processing of the above type of items without acknowledging that it would result in significant and costly burdens for RDFIs and the entire ACH network. Hence, LaSalle's strong opposition to it.

Originating an ACH debit for the charges imposed by FMS for returned checks.

FMS proposes to charge a returned check fee via ACH debit against the account on which a check returned for insufficient funds was drawn. While Federal Reserve System ("FRS") Regulation E may permit this ACH debit without express authorization, the transaction FMS intends to originate is a PPD, for which the ACH Rules require such authorization, even if for a one-time debit. Therefore, even with the proposed changes, these ACH debits would not be in compliance with the ACH Rules.

As you are most likely aware, consumers have been complaining to states attorneys general that the check-based ACH transactions are confusing and unfair, and as a result, the states may seek to restrict the use of such ACH transactions. Consumers need time to adapt to the idea that their check can be the basis of an authorization for an ACH debit to their account (combined with appropriate notice). If adopted, this part of the FMS proposal would most certain increase the level of confusion regarding check-based ACH transactions, increase the friction between banks and their customers, especially consumers, and prompt louder calls for greater action by the states.

Mandatory use of R15 or R14 Return Reason Code.

FMS proposes that RDFIs be obligated to return any Federal agency payments received for deceased customers using the R15, Beneficiary of Account Holder Deceased, or R14, Representative Payee Deceased, as applicable. FMS requires such return reason codes be used because a Federal paying agency will not begin an investigation regarding the status of agency payments being paid to beneficiaries (e.g., social security payments) when they receive a payment back with a return reason code R02, account closed, or other non-death return reason code. Contrary to FMS belief, LaSalle believes that this requirement does impose an additional and significant burden on RDFIs. LaSalle's ACH payment return process is automated and based on LaSalle's ACH system acting on the status of accounts as reported by LaSalle's account system, and LaSalle's account system does not provide for specific codes for the reason an account is closed, simply that an account is closed. LaSalle believes that most RDFIs process ACH transactions in this manner. Thus, RDFIs, including LaSalle, would be required to make substantial changes to their account systems to include such reason codes, develop new procedures for closing accounts to include the use of system reason codes, and train a large group of retail banking support personnel. Therefore, LaSalle strongly opposes this proposed amendment.

Extending the time frame for reclamations.

LaSalle believes that basing the time frame for an RDFI's liability regarding a reclamation of payments by a Federal paying agency to look back from the date of the reclamation itself (and not looking back from the date of the last payment made prior to the date of the reclamation) is a step in the right direction. However, FMS has failed to justify the need to extend that time frame from six to seven years. Moreover, LaSalle believes FMS' expressed concerns would be adequately addressed by a six-year time frame.

LaSalle appreciates the opportunity to comment on the proposed amendments. At your request, LaSalle would be pleased to discuss the above in greater detail with you.

Very truly yours,

Carol L. Tenyak

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