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Helping Credit Unions Serve Their Members

October 20, 2003

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

RE: Proposed Changes to the Automated Clearing House Use by Federal Agencies

Dear Mr. Vajs,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the United States Department of Treasury concerning its proposed amendments to federal agencies' use of the Automated Clearing House (ACH). MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Regulatory Issues Subcommittee, which is comprised of Michigan credit union staff and officials.

MCUL appreciates Treasury's effort to expand the scope of ACH operations and increase the ability of federal agencies to use the ACH system. However, MCUL cannot support this proposal in light of the fundamental problems that we believe it will create. MCUL believes that creating ACH requirements for federal agencies, different from NACHA, will increase the burden and liability of its member organizations. Credit unions will be subject to two separate sets of regulations, one for government agencies and one for everyone else. MCUL offers further suggestions more fully discussed herein.

New Definition of "Business Check"

MCUL opposes the proposed revision to the Department of Treasury's rule (31 C.F.R Part 210.2) that is designed to amend the definition of business checks to include: checks drawn on corporate or business accounts (and third party checks), credit card checks, negotiable instruments issued by a financial institution, and checks drawn on a state or local government, for the following reasons:

1. Current ACH regulations require parties to consent to have their checks converted to ACH transactions. Members whose checks are converted to ACH transactions must either consent or be notified prior to their checks being converted. In the case of third party checks, members will not be able to provide affirmative consent, nor will they be subject to notification provided at the time the transaction occurs. The proposal conflicts with existing NACHA regulations, may violate account agreements between credit unions and their members, and is not adequately addressed in the current amendments.
2. Some credit unions have policies that require signature verification on business checks presented over a certain dollar amount. If these checks are presented via ACH transaction, then the credit union will be unable to verify the signature. This will result in credit unions having to re-examine current policies in order to come into compliance with these new requirements. It could also potentially open them up for greater losses on these accounts.
3. Institutions may respond to the use of unauthorized ACH transactions through programs such as "positive pay". "Positive pay" creates a system where ACH transactions are pre-screened for

vendor and dollar amount; any ACH transactions that have not been authorized are rejected and must be manually verified by the credit union. Converting the new category of "business checks" to ACH payments, unanticipated by the member, will create an inordinate number of "unauthorized" transactions in the credit union's system and the Treasury itself. Clearing up this issue will require additional time, funds and staffing, which most credit unions cannot afford.

4. Since ACH payments are displayed differently than checks when they are processed, the increased conversion of business checks may create confusion for consumers reviewing their billing statements. This differs from other ACH e-check transactions; with the Point-of-Purchase (POP) transaction the consumer gets his or her check back and signs an authorization. In an Internet-initiated (WEB) or telephone-initiated (TEL) e-check transaction, the consumer provides the routing and account number. In these transaction types, it is far less likely that the consumer would have missed being notified of their Accounts Receivable Disclosure. This could sour the opinions of credit union members to the ACH process and result in more member inquiries, complaints and lost credit union staff time due to confusion.

Expanded Accounts Receivable Check Conversion Applications

Department of Treasury's rule to expand the Accounts Receivable Check (ARC) Conversion Applications (31 C.F.R Part 210.6) would allow agencies to originate ACH debit entries received via mail, in dropboxes, or delivered in person where it is impractical for the agency to image and return the check. Furthermore, it would require a separate Cash Concentration or Disbursement (CCD) code to differentiate business checks from consumer checks. MCUL opposes this amendment for the following reasons:

1. Many financial institutions do not have the technology to differentiate between ARC and CCD payments when entering and processing them in their system. This creates difficulty with identifying the proper timeframe for the right of return for any problematic (i.e. forged or altered) payments. Collectively, our member credit unions will have to spend millions of dollars to update their systems to identify federal agency initiated payments, so that they can be processed and verified in the proper amount of time. Under the new "business check" definition, there will be a flood of new checks converted to ACH transactions that could inundate their systems.
2. CCD payments have only a two-day window for their right of return. If business checks are converted into ACH transactions, the Receiving Depository Financial Institution (RDFI) may not be able to verify the check, or the signature on the check, in order to make a return decision in the required time for many credit unions to meet this deadline. This problem could be alleviated through use of a consistent 60-day window on both ARC and CCD transactions when converting check payments to ACH transactions.
3. Current legislation that addresses check truncation, such as the Check Clearing for the 21st Century Act, may help alleviate some of the current problems of federal agencies. MCUL believes that this act alone may help reduce the paper processing of many checks and would serve as a viable alternative to converting these payments to ACH transactions. This form of check truncation should first be given an opportunity before use of the ACH system.

Seven Year Limit on Reclamations

This proposal would prohibit agencies from reclaiming payments that were made more than seven years prior to the date of notice of reclamation (31 C.F.R. Part 210.10 (d)). MCUL opposes the amendment due to its break with current NACHA practices of allowing a six-year reclamation period. The six-year period is more than enough time to reclaim any owed payments, and an additional year would only provide a greater liability to credit unions for no ascertainable reason.

MCUL supports the remaining suggested amendments to 31 C.F.R. Part 210:

We support the amendment to the Revised Accounts Receivable Disclosure (31 C.F.R. Part 210 Appendix C) shortening the disclosure that notifies the check writer that their checks may be converted to an ACH payment. This would make it significantly easier for the check writer to read the disclosure, and the financial institution to disclose the information at a dropbox or on an envelope.

We support the amendment for Re-Presented Check Entries (31 C.F.R. Part 210.6i) allowing agencies to originate an ACH debit to collect a one-time fee in connection with RCK (Represented Check) entries as long as prior notice of the fee is given is supported. This falls in line with most credit unions current policies of return fees on paper checks and makes sense to use with the ACH system. If a debit is processed using the Automated Clearing House, then that system should be able to debit the account for a RCK fee as well.

We support the amendment to use R14 and R15 Codes to notify federal agencies of the death of a government payee (31 C.F.R. Part 210.10a). This would satisfy the RDFI's responsibility to notify the federal agency after learning of the death of a recipient or beneficiary from a source other than notice from the agency. This does not conflict with most credit unions current practices and would speed up the current process of reconciling these accounts when the account holder or beneficiary dies.

We support the amendment to the Post-Death Payments to Which a Recipient is Entitled (31 C.F.R. Part 210.10c). This would put the responsibility back on the shoulders of the federal agency Originating Depository Financial Institution (ODFI) to determine if the beneficiary on the account is entitled to receive future payments. Currently, financial institutions are held liable for failure to return these payments and this amendment would ease the burden to these organizations.

We support the amendment to notification of Misdirected Federal Payments (31 C.F.R. Part 210.13). This would require RDFIs to notify federal agencies of misdirected payments "promptly". While this would allow RDFIs to report these payments within two days, it would not significantly reduce the burden to most member credit unions as they are currently in the practice of handling notifications of misdirected payments the same day they are received. While there was no unanimity as to how these notices should be processed, it appeared that among credit unions NOCs, e-mails and faxes seemed the most popular.

We support the amendment to the Right to Financial Privacy Act (31 C.F.R. Part 210.11). Currently federal agencies are allowed to request 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 proposal would limit the information that agencies may request from financial institutions in accordance with the Act to the name and address of those individuals. This is more in line with current Financial Privacy Act statutes for RDFIs and is appropriate that federal agencies would follow suit.

Conclusion

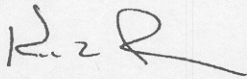
MCUL appreciates Treasury's effort to address the demand for greater access of paperless transactions through expanding the use of ACH transactions. Furthermore, MCUL understands the potential economic saving to federal agencies that would take advantage of the increased opportunities in the ACH system. However, MCUL cannot support the changes because they decrease consistency between Treasury's ACH Rules and the NACHA Rules and either (1) increase the regulatory burden on credit unions as RDFIs in the ACH Network, or (2) institute a greater compliance burden than already required under the NACHA Rules. Therefore, MCUL does not support the revised amendments to expand the definition of "business checks", the expanded accounts receivable check conversion applications and the seven-year limit of reclamations.

MCUL does support the amendments that would streamline disclosures to credit union members and federal agencies, and would ease the burden on its member institutions. These amendments include: the revised accounts receivable disclosures, re-presented check entries, use of R14 and R15 codes, the post-death payments to which a recipient is entitled, notification of misdirected federal payments, and the Right to Financial Privacy Act.

In addition, MCUL strongly encourages Treasury to work toward greater consistency between the Treasury's ACH Rules and the NACHA Rules. Many credit unions as RDFIs report that having to follow one set of ACH Rules for federal government ACH transactions and another set for all other ACH transactions is confusing and it increases the compliance burden on all participants in the ACH Network. Two different sets of rules governing ACH transactions also increase confusion among credit union members. Harmonizing the provisions of the NACHA Rules and the Treasury's ACH Rules would make the ACH Network easier for all participants to use.

We thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "K. M. Ross". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kenneth M. Ross
Vice President of Regulatory and Legal Affairs

cc: Credit Union National Association, Inc.