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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

RE: 31 CFR 210 – Government Participation in the Automated Clearing House Network Request for Comment

Dear Mr. Vajs,

The Upper Midwest Automated Clearing House Association (UMACHA) appreciates the opportunity to comment on the notice of proposed Rulemaking dealing with amendments to 31 CFR 210. UMACHA represents 825 financial institutions and 30 companies in the Upper Midwest on ACH related issues.

In 2003 UMACHA will present over 85 training sessions for our members, including a number of sessions on the processing of Government payments. With the re-write of 31 CFR 210 that became effective in 1999, and the decision by the Financial Management Service to accept the 1999 ACH Rules, that process was very straightforward and our members appreciated the fact that the number differences between the two sets of Rules were minimal. We would hope that, over time, FMS and the Treasury Department would recognize the benefits to themselves, financial institutions, and to consumers businesses of keeping the differences between the ACH Rules and 31 CFR 210 to a minimum.

The changes proposed in this comment DO NOT seem to recognize the value of consistency between the ACH Rules and 31 CFR 210. It's relatively clear that FMS has spent time analyzing the benefits that would accrue to the Treasury Department if the Rules are changed as proposed. However, it's also clear that little research has been done within the financial institution marketplace when it comes to understanding the effects of the proposed changes. When talking to our members we found significant concerns with a number of the proposals. Those concerns follow.

There are eight specific items in the proposal that will be addressed here. They are:

1. Revising the Accounts Receivable Disclosure
2. Expanding the ARC conversion process
3. Expanded Accounts Receivable Check Conversion Applications (ARC)
4. RCK fees
5. Mandatory use of R15 or R14
6. Post-death payments to which a recipient is entitled

7. Misdirected federal payments
8. Seven year limitation on Reclamations

Revision the Accounts Receivable Disclosure

UMACHA recommends that no changes be made to the current disclosure, as it is clear and understandable. Although check conversion is growing rapidly we don't feel that most consumers are comfortable with the concept. We need to allow more time to educate consumers before we scale back our disclosure requirements.

Expanding the ARC Conversion process

UMACHA has serious reservations about the Federal Government converting all non-eligible items (except for their own checks). Most troubling is what conversion of corporate items will do to the cash management systems at many companies and financial institutions (including positive pay and controlled disbursement). Given that payment "silos" in most companies and financial institutions don't communicate, converting a check into an ACH item will cause a significant number of items to reject. This increases the costs for all parties involved; the Federal Government agency, the company, and their financial institution. And if the agency then creates a draft, cost only increase more.

FMS has also suggested that they would like to convert money orders, cashiers checks, convenience checks and other ineligible items. All of these would be considered corporate items and would therefore carry a Standard Entry Class code of CCD. We foresee a number of legal issues for FMS when it comes to money orders and convenience checks being considered business items as they are clearly consumer based. Another concern is the fact that CCD entries have a very short return time frame while consumer-based ACH debits can be returned for up to 60 days after settlement date if they are unauthorized. This inconsistency could also cause legal problems for FMS because of the nonexistence of consumer protections within the CCD code.

With all this in mind UMACHA does not support the Treasury Departments recommendation to convert items considered ineligible today, and to call them corporate items.

Expanded Accounts Receivable Check Conversion Applications (ARC)

NACHA and the ACH Rules work group that deals with check conversion issues, along with the Electronic Check Council, have considered a number of approaches when dealing with "back room" conversion. The biggest concern is that the original check along with the ACH debit will be processed through the payment system. Although no "pilot" program was ever run, a number of companies did back room conversions. In almost every case, at one point or another, both the checks and the ACH debits were generated, meaning consumer accounts were charged twice. The consumers affected were very unhappy and expressed serious concerns about the check conversion process. We realize that the Federal Government would plan on destroying the entries once converted but it only takes one mistake to create real problems within the network. Therefore we don't support this process unless there are sufficient safeguards in place to ensure this won't happen.

RCK fees

The collection of service fees has been a real "hot button" in the retail collections business. There have been a number of companies that have sued either states or other companies over their right to collect a service fee with a "notice equals authorization" point of view. This has forced NACHA and the Regional Payments Associations (including UMACHA) to work with our members to find specific instances of non-compliance so we can get those companies into the

Rules enforcement process and hopefully get them (or their originating financial institution) fined as well as stop them from processing.

If Treasury enables the notice equals authorization process for RCK entries originated by the Government it will virtually destroy any opportunity NACHA has to find a solution that collection companies, financial institutions and government agencies can live with. It also puts NACHA in a very difficult position because the Federal Reserve Board of Governors staff has told NACHA that if they relaxed the consumer protections in the ACH Rules the Fed reserved the right to make changes to the regulation, inserting additional consumer protections.

Although the Treasury's position is consistent with Regulation E it is not consistent with the ACH Rules and based on that inconsistency UMACHA does not support this proposal. On a different note, if the Federal Government converts all items to an ACH debit they would not be able to re-present a return as an RCK because the original check was not processed.

Mandatory use of R15 or R14

Intellectually, UMACHA agrees that it makes sense when a beneficiary or representative payee dies, to have the entry returned with the appropriate death based code. But realistically most financial institutions have their return systems automated and if an account is closed, the item is automatically sent back that way. To require financial institutions to look at every government entry returned as account closed to see if the beneficiary has died would be VERY difficult and expensive. Since the Federal Government is in the BEST position to know if a recipient of a payment has died, it would only seem reasonable that the agency should be checking whenever they get an entry back account closed to see if the recipient is still entitled.

Post-death payments to which a recipient is entitled

After reading this section of the proposed Rules, UMACHA will be recommending its members take the same position on returning benefit payments that they do today. If the individual recipient is dead or legally incapacitated, return the payment. It is not up to the financial institution to determine whether a recipient is entitled to a payment or not, that's up to the agency is question. For financial institutions to limit their liability they have to return the payment if they know the individual has died. With that in mind this recommended rule would result in no changes for financial institutions already returning payments after death.

Misdirected Federal Payments

In today's environment, if a financial institution becomes aware of a payment that was misdirected they generate a Notification of Change (NOC), which informs the agency of the problem and gives that agency the information they need to correct the transaction. UMACHA recognizes that not every financial institution does this correctly but to ask financial institutions to call the agency instead is not reasonable. Agency contacts and phone number change making that sort of process unmanageable for most financial institutions. UMACHA suggests that the Treasury Department continue to support the NOC process rather than a manual calling process.

Seven-year limitation on Reclamations

Currently, financial institutions are required to maintain records of all ACH transaction data for six years after the settlement date of the transactions. If Treasury chooses to require financial institutions to be able to produce transaction data back further then it will require an ACH Rule change, and then it will require financial institutions to add capacity to their storage capabilities. It will also require them to go back to the records they are currently maintaining and be sure they are maintained for an additional year. It would seem more reasonable if Treasury and NACHA would work together to find a reasonable record retention standard that all parties would abide by.

In virtually every issue above one of the biggest problems is the inconsistency it will cause with the ACH Rules that govern commercial ACH transactions. If Treasury fully implements all the changes it is suggesting there will be significant costs in software development, policy and procedure changes, and training. It would seem more reasonable for Treasury to work with the private sector and NACHA, rather than on it's own. This may slow down the implementation of a few of the suggestions but would have significant benefits to all; with the primary benefit being consistent software, procedures, and operational processes.

UMACHA appreciates the opportunity to comment on these proposed rules and hopes that the Treasury Department will take a little more time to talk to the financial institution and corporate marketplaces before finalizing any of the proposals. Please address any questions about our comment to Fred Laing, II at (763) 549-7000 or fredl@umacha.org.

Sincerely,

Fred Laing, II
President

Cc: UMACHA Board of Directors
Ian Macoy – NACHA
Joanne Gasparini – SSA
Mid-Continent Alliance Members