

October 17, 2003

Mr. Stephen M. Vajs
Director Risk Management Division
Financial Management Services
U.S. Department of the Treasury
Room 423
401 - 14th St. SW
Washington, DC 20227

Via U.S. Mail and
e-mail: 210comments@fms.treas.gov

Re: **31 CFR Part 210 -- Government Participation in the Automated Clearing House
("ACH") Network**

Dear Mr. Vajs:

This letter responds to the Department of the Treasury's ("Treasury ") request for comment regarding proposed revisions to 31 C.F.R. § 210; Federal Government Participation in the Automated Clearinghouse. The comments of Wells Fargo & Company are based on the proposed modifications set forth at 68 Fed. Reg. 50672 (August 21, 2003).

Wells Fargo & Company is a diversified financial services company with \$370 billion in assets, providing banking, insurance, investments, mortgage and consumer finance from more than 5,800 stores and the Internet (wellsfargo.com) across North America and elsewhere internationally. Wells Fargo functions as both an ODFI and an RDFI.

Although Wells Fargo supports some of the proposed revisions, there are a number of areas that Wells Fargo believes should be modified before final rules are adopted. Therefore, we welcome this opportunity to comment on these proposals.

1. Revised Accounts Receivable Disclosure. You requested comment on whether the proposed disclosure strikes the appropriate balance between the need for a shorter notice and the need to ensure that consumers understand what is happening to their checks and comment on whether the wording of the proposed notice is clear and understandable.

Wells Fargo does not support a departure from the NACHA rules that would allow an NSF fee to be collected via ACH without the use of a signed authorization by the consumer. Consequently, we are opposed to the underlying language of the notice.

However, in the event that a notice is utilized to obtain consent, the wording contained in the proposed notice should be modified because many of these checks will be delivered in person rather than sent by mail. The notice should state "If you give us a check" rather than "If you send us a check."

2. Expanded Accounts Receivable Check Conversion Applications. You requested comment on using the ARC rules in the conversion of checks which would normally be POP transactions, but where the necessary technology does not exist at the Federal site to produce, obtain and store the authorization.

Wells Fargo is opposed to a departure from the NACHA rules by applying the ARC rules to POP transactions.

The bank has made significant efforts toward educating consumers on the various rules and requirements relating to ACH items. Because the Electronic Check applications are new and the banking industry is struggling to educate and gain customer acceptance for the new applications, we believe that consumers will be confused by the conversion of in-person payment checks under ARC rules. Those rules were not designed to apply to such conversions.

Such a change will create a significant burden to the banking industry and it will become a customer service issue and increase administrative expenses.

The ARC Code signifies that the customer mailed a payment (or placed a payment in a drop box) which was converted to an electronic payment. If the federal government uses the ARC standard entry class code for in-person payments, the consumer will not recognize the payment and will make an inquiry to the bank. When consumers inquire about electronic payments on their accounts the bank must explain to the consumers what happened in the transaction. Because sufficient information is not available, the bank will not be able to accurately describe the transaction to the customer. This will lead to further confusion and aggravation for the customer. We are further concerned that this will increase customer suspicion regarding the entire ACH payment system.

A another problem we have experienced, and continue to experience, regarding federal agency ARC payments is the inadequate description provided by the agency for these transactions. This leads to more customer service confusion and results in heightened administrative costs and a diminution of customer service reputation for the bank. See the attached *Appendix* for sample transaction descriptions that illustrate this problem.

3. Conversion of Additional Instruments. You requested comment on expanding the scope of ACH to allow the conversion of such items as money orders, traveler's checks, certified bank checks, and credit card checks.

Wells Fargo does not support the expansion of check conversion to include business checks, money orders, cashier's checks and other third-party items which are currently ineligible for conversion.

The conversion of these items to ACH will seriously disrupt cash management practices, specifically for those commercial customers using automated account reconciliation, positive pay, controlled disbursement and ACH debit block products. This includes many Federal agencies. This will also create disruption of the bank's ability to monitor and reconcile instruments of the bank, like cashier's checks and certified bank checks which make essential use of these fraud prevention tools.

Conversion of business checks renders current cash management tools useless. Obviously, accounts which have ACH debit blocks will reject all ACH debits. The conversion of these items could also cause increased return rates to the Federal government since many commercial customers have ACH debit blocks on their accounts.

Checks that are converted will post to accounts, but treasury management services paid for by our commercial customers do not update check paid information, suspect check activity reports or update check issue files to assure that items which are paid cannot be paid a second time.

American business depends on the ability of banks to provide effective payment control services which can help detect and lessen payment fraud and provide businesses with required additional control over their payments. The previous FMS decision to convert business checks has already resulted in greatly heightened expenses for Wells Fargo and other Banks. Significant dollars were spent in development costs and the goodwill of many of our business customers was lost or severely impaired when those businesses were unable to reconcile their accounts because their business checks had been converted.

In order to function properly, positive pay service requires the information on the check document to be preserved. Positive pay is designed to allow a business customer, either by standing instructions to the bank or through manual review, to make a decision to pay an item or reject it, based on certain characteristics of the check. Many of these characteristics are lost in the conversion process.

These and other cash management services are an important banking function which business customers have traditionally relied upon in the operation of their businesses. These functions will be severely impaired or made impossible by the conversion of these additional items to ACH. The conversion of these items will also increase exposure to fraud as these items, issued as paper, will be presented as electronic transactions, thus bypassing fraud prevention tools.

It would be a significant financial burden on the banking industry to update current commercial treasury management systems to attempt to assure that these converted items are handled in as efficient and as safe a manner as is currently the case with business check transactions.

Further, we understand that federal agencies are excluding federal government items from their conversion plans while the plans include converting all other types of paper instruments. In other words, it appears that the financial industry is being asked to assume burdens that similarly situated federal agencies are being permitted to avoid.

4. Re-Presented Check Entry Service Fees. You requested comment on the proposal to allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry if notice of the fee is given to the Receiver before the agency accepts the Receiver's check.

Wells Fargo does not support a departure from the NACHA rules that would allow an NSF fee to be collected via ACH with notice only to the consumer.

Wells Fargo believes that the current requirement that only a signed writing or similar authentication to authorize an NSF fee should remain in place for these transactions. Wells Fargo does not support a departure from the NACHA rules that would allow an NSF fee to be collected via ACH by providing notice alone to the consumer. We believe that this will cause consumer confusion which will be difficult to mitigate through any modification of bank statements. Allowing an NSF fee without specific consumer authorization will cause an increase in the number of inquiries to the bank. As well, the bank will have no information about the basis for the charge and will not be able to satisfy the customer's questions. This is an administrative burden for the bank, but the same burden will be mirrored by the Federal Agency when the debit is reversed.

If an NSF fee is collected via ACH, it is unclear what standard entry class code would be required for these items. This should be clarified at the time such a process is proposed.

Moreover, the proposed rule does not make clear the timing for the collection of the NSF fee. If this proposed rule is approved, it should be clarified as to whether such a fee would be collected simultaneous with the original item as a separate ACH item or whether such a fee would be debited only after the original item is paid.

5. Reclamations; Misdirected Payments. Mandatory Use of R15 or R14 Return Reason Code. You requested comment on the use of the R15 and R14 codes as a means of notifying agencies that a recipient is deceased because of the stop on subsequent payments and investigation that is automatically triggered when an agency receives an R15 returned payment.

Wells Fargo supports this change, subject to certain qualifications.

Recent technological changes have allowed the bank to streamline its processes in this area with the effect that the mandatory use of R15 and R14 codes will work well within

the bank's infrastructure. While we believe that the rules should provide incentives to return items using R15 and R14 codes, we do not believe there should be any liability imposed on a bank which returns items under another code due to inadvertent error so long as the Bank has procedures in place to reasonably assure that R15 and R14 codes are used. Our concern is that regardless of the procedures that are implemented, it is highly likely that items that are presented for deposit to an account that has been closed due to the death of the accountholder will from time to time be returned with the code R02.

6. Post-Death Payments to Which Recipient Is Entitled. You requested comment on the proposal that an exception be made to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability.

Wells Fargo supports this change.

We believe it will be helpful to the customer and their beneficiaries.

7. Misdirected Federal Payments. You requested comment on proposed changes, including the means by which this notice to agencies could be most conveniently and effectively provided.

Wells Fargo supports this change, subject to certain qualifications.

Our support is contingent on the fact that the required method of contacting the Federal Agency is by electronic means. Current technology provides an efficient means of electronic notification. In the event, that a rule change required notification through paper means or by telephone, the rule would be unduly burdensome and would require a great amount of administrative time and it would circumvent the already effective process currently in place.

8. Seven Year Limit on Reclamations. You requested comment on the proposal to prohibit agencies from reclaiming any payment that was made more than seven years prior to the date of the notice of reclamation.

Wells Fargo has no objection to this change.

We do not see any substantial impact for the bank or the banking industry.

9. Right to Financial Privacy Act Changes. You requested comment on the proposal that the information financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act.

Wells Fargo supports this change.

Banks are under strict regulations to ensure financial privacy. Wells Fargo complies stringently with these regulations and we welcome a change that would clarify what is required to comply with existing financial privacy regulation.

10. Notification to Account Owners. You requested comment on the proposal that in order to allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately."

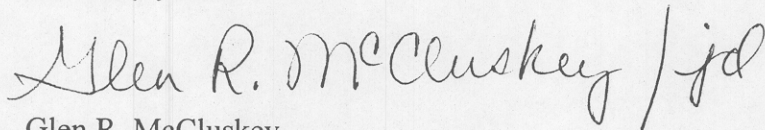
Wells Fargo supports this change.

We do not see any substantial impact for the bank or the banking industry.

In closing, we wish to restate that Wells Fargo welcomes this opportunity to comment on the Treasury's proposed rules regarding ACH activities and 31 C.F.R. § 210.

Thank you for your time and consideration of this matter. Please contact me if you have questions.

Sincerely yours,



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APPENDIX

Re: 31 CFR Part 210 -- Government Participation in the Automated Clearing House ("ACH") Network

Below are examples of some current transaction descriptions received from federal agencies for ARC items. After seeing these descriptions on their monthly statements, customers have told us that they cannot relate these charges to items they may have purchased or they do not understand what event triggered these electronic payments. This results in customer confusion and diminution of the bank's service reputation with its customers.

\$200.00 RD 336 FINCOM(-) PAYMENT	031013 5253	121124500136400010536
\$200.00 RD 336 FINCOM(-) PAYMENT	031013 5249	121124500103400019378
\$200.00 RD 336 FINCOM(-) PAYMENT	031013 5247	121124500103400019854

The Company Name, RD 336 FINCOM(-), is not meaningful to the consumer and the entry description, PAYMENT, does not enhance the transaction explanation.

Other examples

\$145.82 BFC	PAYMENT	031014 1601	121102500443800000813
\$102.44 BFC	PAYMENT	031014 4022	121102500443800000881
\$ 99.45 BFC	PAYMENT	031014 3107	121102500443800000875

The use of cryptic company names, like BFC, with no additional identifying information on the transactions heightens the Bank's concerns about the transaction content that will be used if a larger roll-out of check conversion transactions takes place based on the proposed rule changes.