

WESTERN PAYMENTS ALLIANCE

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October 20, 2003

Mr. 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: RIN 1510-AA93
Federal Government Participation in the Automated Clearing House

Dear Mr. Vajs:

The Western Payments Alliance¹ appreciates the opportunity to comment in response to the notice of proposed rulemaking issued by the Department of the Treasury, Financial Management Service ("FMS") regarding proposed amendments to 31 CFR 210, which governs the use of the Automated Clearing House (ACH) system by Federal agencies.

WesPay commends the Department of the Treasury in its continued efforts to enhance the migration of paper-based payments to electronic payment alternatives, while at the same time balancing the desire of both consumers and corporations that may wish to continue to pay obligations to the United States Government via paper check. Our organization has a history of supporting solutions that promote efficiency and reduce risk in the payment collection process, and we believe, in general, that the initiatives FMS has proposed will help to achieve this end. However, we have concerns to share on certain provisions of the Department of Treasury's proposals regarding consumer and corporate check conversion, reclamations, misdirected federal payments, and reclamation time frames.

WesPay has previously expressed concern² over inconsistent application between *NACHA Operating Rules* and Federal Government ACH regulations. Our association strongly supported the Department of the Treasury adoption of the *NACHA Operating Rules* in May, 1999, with limited exceptions, as the body of rules governing federal government ACH payments. This was

¹ The Western Payments Alliance ("WesPay") is a not-for-profit financial trade association providing electronic fund transfer and check processing services to over 1,000 financial institution and approximately 100 corporate members in California, Hawaii, Idaho, Nevada, Oregon, Utah and Guam. WesPay consults with its members on the application and interpretation of Automated Clearing House (ACH) Operating Rules, and provides a variety of workshops and seminars designed to increase its members' knowledge of ACH processes, enhance rule compliance, and mitigate risk. Additionally, WesPay's check clearing, settlement, and adjustment services process approximately 5.2 million checks daily, with an average daily value of over 4.7 billion dollars, on behalf of member institutions.

² See WesPay Comment Letter, August 2, 2001, re: RIN 1510-AA84, "Federal Government Participation in the Automated Clearing House."

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a positive progression towards the goal of standardized regulations for all ACH transactions. Indeed, many WesPay member financial institutions have indicated this action simplified ACH processing routines, resulting in reduced errors and exceptions, and thus reduced risk.

WesPay remains concerned that FMS check conversion proposals continue to move away from *NACHA Operating Rules* by converting checks presented to U.S. Government agencies in a manner inconsistent with the Rules. This may require financial institutions to adopt multiple processing routines. The result appears counterproductive to the efficiencies in check conversion that FMS is committed to promote and may increase risks to depository financial institutions.

Our responses to specific areas of the proposal that request comment are summarized below:

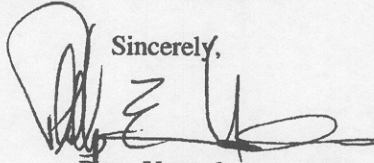
- **Revised disclosure for Accounts Receivable (ARC) Entries**—We agree that simplified disclosure language would be less burdensome on federal agencies, and provide a clearer description of the check conversion process for the consumer. The verbiage which indicates the timing of the ACH debit to the customer's account appears superfluous.
- **Expanded ARC conversion applications**—we appreciate the problems associated with compliance with Point of Purchase (POP) rules when situations or logistics do not allow for electronic capture of MICR information necessary to complete a POP transaction. Adopting another exception to an established processing rule, by allowing certain transactions that are in essence POP entries be collected as ARC, adds to the level of consumer and corporate confusion regarding check conversion.
- **Conversion of additional instruments**—WesPay does not believe it is appropriate for FMS to propose expansion of "eligible items" for check conversion at this time. Our financial institution members incur operational expense and experience customer/member dissatisfaction when paper items exempt from check conversion rules are turned into ACH debits—specifically, credit card checks and line of credit checks. Our members do not wish financial institution obligations (cashier's checks, official bank checks, money orders, etc.) converted to ACH debits.
- **RCK Service Fees**—WesPay agrees in concept with adoption of a "notice equals authorization" model for RCK service fees, and supports NACHA efforts to craft a similar rule modification. However, to provide consistency between ACH Operating Rules and Federal regulations, we believe FMS should consider a delay in implementation of its proposed change until such time as NACHA adopts a similar provision within its rules.
- **Reclamations**—
 - We support the proposal to require a RDFI return a post-death benefit payment either R14 or R15, as appropriate, provided the RDFI has knowledge of the death of the recipient. We are curious as to why return of an entry R15 triggers an investigation into the status of the recipient, with no indication that an R14 return starts the same process.
 - We believe the proposed "Notice of Misdirected Payment [210.8(d)]" should state the specific circumstances the Department of Treasury would consider constitute an RDFI "becoming aware" that the agency has "originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information."

- We do not support the proposed expansion of reclamation time limits as currently worded. We believe the seven year reclamation time limit should be based on the settlement date of the ACH credit entry, not the date of the notice of reclamation. Additionally, a NACHA rule amendment would be required to change the current ACH record retention period of entry information from six years to seven years from settlement date for consistency.

WesPay remains strongly supportive of FMS efforts to create a more efficient payment processing environment for checks received by federal government agencies. We believe the agency's goals can best be achieved by continuing to work closely with NACHA to ensure that rules for ACH transactions are consistent, whether the payment is to or from a commercial entity or government agency. We would request FMS to seriously consider the operational impact its proposed changes may have on participating financial institutions as it considers its final rules. Going forward, the Department of the Treasury may consider the potential of check truncation programs that may emerge as a result of passage of the *Check Clearing for the 21st Century Act*.

Thank you again for the opportunity to comment. If you would like to discuss any of WesPay's comments in further detail, please do not hesitate to contact me by e-mail at: pyeatrakas@wespay.org, or by telephone at (415) 433-1230.

Sincerely,



Peter Yeatrakas
President Emeritus

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cc: Gerard F. Milano, President & CEO, Western Payments Alliance
Western Payments Alliance Board of Directors