THE ASSOCIATION *of*
CORPORATE CREDIT UNIONS

C49
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May 4, 1998

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, S.W.
Washington, D.C. 20027

RE: Federal Government Participation in the Automated Clearing House
31 CFR Part 210

Dear Ms. Johnson,

The Association of Corporate Credit Unions (ACCU) appreciates the opportunity to comment on the Service's proposed rule governing the use of the Automated Clearing House (ACH) system by Federal agencies. The rule appeared in the *Federal Register* on February 2, 1998. By way of background, there are 37 corporate credit unions located around the country that comprise ACCU and provide liquidity, investment products, payments settlement and other financial services to the nation's 11,500 federally and state chartered credit unions.

ACCU generally supports the Service's determination that the ACH rules, which apply to private entries made through the ACH system, should also apply to credit and debit entries and entry data originated or received by Federal agencies. ACCU believes that the use of private industry rules in these transactions will reduce the regulatory burden on financial institutions which otherwise might have to comply with conflicting or duplicative requirements.

In reviewing the ACH rules, the Service has determined that, given the special nature of Government entries, and the importance of protecting public funds, it is in the best interest of the public for the Service to preempt, in part or in whole, twelve provisions of the ACH Rules. ACCU's specific comments on each section of the proposal and the proposed preemptions are listed below.

ACH #026

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SECTION-BY-SECTION ANALYSIS

Section 210.1 – Scope; Relation to Other Regulations

Current Part 210 applies only to credit entries originated by the Federal Government for the purpose of making payments. Proposed Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments, collections or for information purposes. ACCU supports this broadened scope.

Section 210.2 – Definitions

Under the proposal, any term that is not defined (i.e. - "banking day", "business day", "erroneous payment", "prenotification", etc.) will have the meaning set forth in the ACH rules. ACCU supports this addition. ACCU also supports the Service's proposal to add several new definitions to the regulation such as "ACH Rules"; "Authorized payment agent"; "Automated Clearing House or ACH"; "Federal Payment"; "Government entry"; and "Greenbook."

One of the proposed new definitions in Section 210.2(b) is "Actual or constructive knowledge" relating to a receiving depository financial institution's (RDFI's) knowledge of the death or legal incapacity of a recipient or death of a beneficiary. ACCU does not support the addition of this definition because it unreasonably broadens the circumstances under which a financial institution can be liable in reclamation cases. Under the current rule, a financial institution is not deemed to "have knowledge of the death or incapacity" until it is brought to the attention of an employee who handles benefits payments or when it would have been brought to that person's attention if the financial institution had exercised due diligence. ACCU believes that this burden is sufficient for financial institutions in determining liability in reclamation situations.

Another of the proposed definitions, "Applicable ACH Rules", in Section 210.2(d) would preempt five specific provisions of the ACH rules. ACCU's comments regarding each preemption are as follows:

210.2(d)(1) - ACH members: Preempts the limitation on the applicability of the ACH rules to members of an ACH association. ACCU supports this preemption because it allows the ACH rules to encompass Federal agencies.

210.2(d)(2) - Compensation: Preempts the compensation rules set forth in the ACH rules. The Service's justification for preempting this particular provision of the ACH rules is unclear. It is ACCU's position that the ACH rules related to compensation are sufficient for resolving claims, including Federal agency claims.

210.2(d)(3) - Arbitration: Preempts the requirement under the ACH rules that disputes among participants be settled by arbitration procedures set forth in the ACH rules. Once again, ACCU believes that the ACH rules related to arbitration are adequate for all ACH participants including Federal agencies.

210.2(d)(4) - Reclamation: Preempts all ACH rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments. This preemption is understandable in light of the already existing rules in Part 210 regarding reclamation. However, ACCU has concerns regarding the proposed changes to the reclamation process as contained in the proposed Subpart B. Please refer to our comments below.

210.2(d)(5) - Timing of Origination: Preempts the requirement that a credit entry be originated no more than two banking days before the settlement date of the entry. This practice has been in place by the Federal government for many years and ACCU supports its continuance through this preemption.

Section 210.3 – Governing Law

This section incorporates by reference the applicable ACH rules published in the "1997 ACH Rules" including all rule changes published with an effective date on or before September 19, 1997. Under the proposal, any amendment to the applicable ACH rules subsequent to September 19, 1997 shall not apply to Government entries unless the Service publishes a notice of acceptance of the amendment in the Federal Register.

Although ACCU understands the Service's desire to review new ACH rules and their applicability to Federal agencies, ACCU is fearful that such a review will not be accomplished expeditiously and will leave uncertainty as to which ACH rules do and do not apply to Federal agencies. ACCU suggests including a time requirement within which the Service must accept or decline amendments to the ACH rules (i.e. – 30 days). Imposition of such a time limit effectively balances the Service's need to review such amendments with the public need to avert confusion and uncertainty in regarding which amended ACH rules apply to Federal agencies.

Section 210.4 – Authorizations and revocations of authorizations

Subsection (a) requires that a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. It is unclear why preemption of existing ACH rules is mandated. Current ACH rules place ultimate liability for any loss from a forged authorization on an originating depository financial institution (ODFI). ACCU strongly believes that if a financial institution accepts and processes an enrollment for a recipient, obtains normal identifying information in the process, and the enrollment is accepted by a Federal agency, then liability for any forged authorization should remain with the ODFI as stated in the ACH rules. ACCU strongly opposes the shifting of liability to RDFIs for "forged enrollments." It is ACCU's position that such liability should remain with the ODFI as contemplated by the ACH rules.

Proposed subsection (a)(2) provides that an originator and an ODFI would be prohibited from initiating a debit entry to an agency without the express permission, in writing or similarly authenticated, of the agency. ACCU supports this preemption of the ACH rules as a reasonable alternative to current standards for private entries.

Section 210.5 – Account requirements for benefit payments

This section mandates that the account to which an ACH credit entry representing a benefit payment is deposited must be in the name of the recipient or authorized payment agent, as applicable. Although this requirement is not imposed under the applicable ACH rules, ACCU supports this provision and believes it will help to ensure that benefit payments reach the intended recipient.

Section 210.6 – Agencies

This part sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. Subsection (e) preempts the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). ACCU believes that limitation of Federal agencies' liability is appropriate only to the extent that financial institutions' liability to Federal agencies is also allowed, as contained in proposed Section 210.8(c). ACCU recommends, however, that the phrase "financial institution's negligence" be clarified in order to determine when Federal agencies' liability can be further reduced.

Section 210.7 – Federal Reserve Banks

ACCU supports the reorganization and expansion of current section 210.6 to proposed section 210.7. The revision more clearly presents the role and responsibilities of the Federal Reserve Banks.

Section 210.8 – Financial Institutions

This section of the proposal addresses the obligations of financial institutions with respect to Government entries. Subsection (a) specifies that if an agency initiates a prenotification entry, the RDFI must verify that the account number and one other item of information in the entry both relate to the same account. This subsection supercedes ACH rules that permit financial institutions to rely on the account number alone in posting payments to an account.

ACCU strongly objects to this preemption of the ACH rules. Requiring financial institutions to verify the recipient's identity with data in addition to the account number will impose not only substantial costs but also additional processing time for financial institutions. ACCU believes that the ACH rules adequately safeguard the need to accurately identify recipients via their account numbers and that no additional form of identifying data should be required from financial institutions.

Subsection (c) appropriately limits the liability of financial institutions to the amount of the entry for losses sustained by the Federal Government. However, ACCU does not support the requirement in subsection (c)(1) that an ODFI will be liable for the amount of the transaction plus interest for debits transmitted without prior agency authorization.

As stated above, it is ACCU's position that the ACH Rules related to compensation are sufficient for resolving claims, including Federal agency claims.

Subpart B
Section 210.9 – Parties to the reclamation

ACCU supports the addition of this new section to delineate the differing roles of the financial institution, Treasury, and the agency that certified the benefit payments in question.

Section 210.10 – RDFI Liability

As stated above, ACCU does not support the broadening of financial institution liability based on the new definition of "actual or constructive knowledge." ACCU urges the Service to maintain the existing standard for financial institution liability in instances of reclamation.

Section 210.11 – Limited Liability

Again, ACCU does not support the imposition of additional requirements on financial institutions in order to limit their liability. ACCU believes that the current standard is sufficient and does not support the change to an "actual or constructive knowledge" standard.

Section 210.13 – Notice to Account Owners

ACCU approves of the changes made to this section to provide for the possibility of an automated reclamation.

COMMENTS ON FUTURE CHANGES TO RECLAMATION PROCESS

The Service proposes to reorganize and rewrite Subpart B of Part 210 – Repayment of Benefit Payments. The Service believes it would be in the best interests of the Federal Government and financial institutions to develop a more cost-effective and efficient reclamation process by simplifying the formula for allocating liability and eliminating the manual processing requirements upon which the current reclamation process is based. Specifically, the Service is considering ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process. The Service has requested comments on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death.

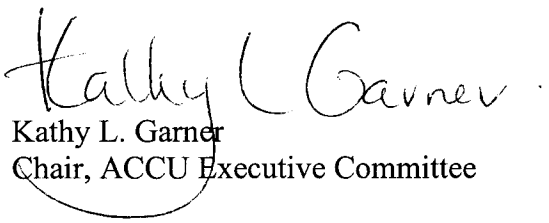
ACCU applauds the Service's efforts to simplify and automate the current reclamation process. However, the proposed simplification, in which an RDFI would be liable for the amount of any post-death entries received, regardless of the RDFI's knowledge of the death, places an inordinate amount of liability and financial burden on the RDFI. It is

ACCU's position that the informational and certification requirements should be maintained to protect an RDFI from unlimited liability for post-death entries.

Although the proposal suggests a cost saving with automation, the Service recognizes that many Federal agencies are not in a position to move to an automated reclamation at this time. ACCU encourages the Service to continue its efforts to formulate an automated reclamation process that effectively balances the need to streamline the existing cumbersome system while maintaining reasonable protections to RDFIs. One potential alternative to effectuate the Service's intent would be to develop a form of erroneous death information which could be transmitted via ACH (similar to an ENR). Such an electronic form would omit the need for paperwork yet maintain an RDFI's opportunity to limit liability.

ACCU appreciates the opportunity to comment on this important proposed rule.

Sincerely,



Kathy L. Garner
Chair, ACCU Executive Committee

KLG/cgh