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November 17, 2004

Ms. Jennifer J Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551  
[Regs.comments@federalreserve.gov](mailto:Regs.comments@federalreserve.gov)

Dear Ms. Johnson:

WACHA – The Premier Payments Resource Association representing 398 members in the 7<sup>th</sup> Federal Reserve District respectfully submits this response to the Federal Reserve (“Board”) on its request for comment on proposed changes to Regulation E and its Official Staff Interpretation (“Commentary”).

- A. Electronic Check Conversion/ACH Transactions
  - a. Section 205.3

**Merchants and Payees covered under Regulation E**

Currently, a merchant or other payee that engages in electronic conversion transactions is not covered by Regulation E, because it does not meet the definition of “financial institution,” or issues an access device and agree to provide EFT services. Proposal would require compliance by merchants and payees.

WACHA’s members would **not** support this proposed regulation change for a couple of reasons. First of all, the NACHA rules currently have a system in place to fine the Originating Depository Financial institution if their merchants are violating the NACHA rules as it relates to disclosure and second WACHA members feel that the regulating agencies could not be able to monitor the volume of these transactions.

**Notices; consumer’s Financial Institution**

Model clauses for initial disclosures would be revised to reflect that one-time EFTs may be made from a consumer’s account using information from the consumer’s check and to instruct consumers to notify their account-holding institutions when an unauthorized EFT has occurred using information from their check.

WACHA members would **not** support this model disclosure as the financial institution's customer or member should report all unauthorized activity including telephone and internet thus not limited to check conversion. Most financial institutions already have error resolution information in their disclosures.

### **Consumer Authorization and Notices; Payees**

The Board is proposing model clauses and notice requirements.

WACHA members support having **one** model notice thus not adding confusion to the consumer.

### **Clearing timeframe**

The Board is proposing model disclosure language that would inform consumers that when their transaction is processed as an EFT, funds may be debited from the consumer's account.

WACHA members **do not** support this disclosure because it may **not** be accurate. In today's current environment and with the recent changes in check presentment a check may actually clear faster than an ACH item.

### **Return Check to Customer**

Again, we do not support this disclosure as in many cases especially in light Check 21 many financial institutions do **not** return the checks in the statements. Check 21 **only** required disclosure to those consumers who did receive their checks back and requiring disclosure would add confusion.

### **Requiring a written signature at point of sale for NSF check fees**

Currently Regulation E states "notice equals authorization"

Although WACHA receives a lot of consumer complaints about no written authorization because the consumer is afraid that anyone can debit their account WACHA believes that the Board should **not** require "written signed authorization" at the point-of-sale through Regulation E but make it **very** clear that payment network and other applicable rules and laws may result in additional authorization requirements and may provide more consumer protection.

### **Consumer Disclosure Addressing Multiple Collection Scenarios**

The proposed revision would explain that a payee may obtain the consumer's authorization to process a transaction as an EFT or as a check.

We feel that the merchant and the biller require greater flexibility in terms of how consumer checks may be used in the payment process. It is already occurring today only remotely created drafts are being created which is **very** confusing to the consumer. If an ARC transaction was unable to be processed and a substitute check was created would be less confusing to the consumer providing disclosure or notice was provided.

### **Receipt of Multiple Checks**

The regulation would provide that obtaining authorization from a consumer holding the account on which a check will be converted is sufficient to convert multiple checks submitted as payment for a particular invoice or during an individual billing cycle.

WACHA members would support this type of transaction as they viewed it similar to disclosure to a joint account.

### **Error Resolution**

Currently financial institutions may satisfy its obligation to investigate an alleged error by reviewing its own records if the alleged error concerns a transfer to or from a third party and there is no agreement between the institution and the third party for the type of EFT involved. In the proposed regulation this would be expanded outside the “four walls”.

WACHA feels that would become very burdensome since they are not able to identify the third party and it is out of their control.

### **Stop Payment Orders**

We feel that there is a difference between stop payment and authorization revoked and therefore would **not** recommend combining them. A stop payment like a check is for one payment and one payment only and not any future checks I write.

WACHA and its members would like to thank the Board of Governors for allowing our comments to be expressed. If you have nay questions please don't hesitate to call. Thank you again

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