



November 18, 2004

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

*The mission of the Association for Work Process Improvement is to enhance the performance of organizations and strengthen the value of professionals that employ emerging technologies in mail, remittance, document and forms processing.*

Re: Comments to Proposed Amendments to Regulation E and the official staff interpretation  
Docket No. R-1210

Dear Ms. Johnson:

The Association for Work Process Improvement (TAWPI) is pleased to respond to the Board of Governors of the Federal Reserve System's proposed amendments to Regulation E that would address its coverage of electronic check conversion services and those providing the services.

TAWPI's mission is to enhance the performance of organizations and strengthen the value of professionals that employ emerging technologies in mail, remittance, document and forms processing. TAWPI's core membership is comprised of middle and senior level managers who are responsible for lockbox and remittance processing operations in organizations such as banks, third party lockbox providers, insurance, utilities, telecommunications, retail, card services and other major billers.

In 2002, TAWPI formed the Remittance Processing Council to help our core membership identify and understand the business and implementation issues related to check conversion. The mission of the Council is to identify, understand, and contribute to the development of payment work processing that will benefit the future direction of remittance processing operations. The TAWPI Council is made up of more than 40 member organizations and over 145 active participants. Attached for reference is a current list of TAWPI Remittance Processing Council members. They have been instrumental in identifying areas of concern related to these proposed amendments, and we welcome the opportunity to discuss these issues in our response to the Request for Comment.

Our response to the issues in this proposal is provided from an operation's perspective, including the biller or its agent (bank lockbox or third party non-bank lockbox provider).

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TAWPI is supportive of the initiatives of the Federal Reserve to interpret the requirements of Regulation E to facilitate compliance in the offering of electronic fund transfer services to consumers, and to propose rules to further define coverage of electronic check conversion services and those providing the services. The Council spent a great deal of time reviewing the RFC, which stimulated much discussion. As a result, we have chosen to make the attached general comments.

Thank you for the opportunity to respond to these proposed amendments.

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## **TAWPI Remittance Processing Council**

ABN AMRO  
AFS - Advanced Financial Solutions, Inc.  
Allstate Insurance Company  
Ameren Services  
AT&T  
BancTec, Inc.  
Bank of America  
Capital One Services, Inc.  
Carreker Corporation  
CheckFree Corporation  
Citigroup  
Comerica Bank  
CSC  
Data Management Products, Inc.  
eFunds  
Exelon Energy Delivery  
Federal Reserve Bank  
Fidelity Investments  
Fifth Third Bank  
First Data Corporation  
Garrett Consulting Group, Inc.  
J&B Software, Inc.  
Mellon Global Cash Management  
Meta Software, Corp.  
National City Corporation  
National Item Processing, Inc.  
NetDeposit  
OPEX Corporation  
Palmer Consulting, Inc.  
Politzer & Haney  
PS-21 Consulting Group  
RDM Corporation  
Regulus Group, LLC  
Solutran Customized Payment Solutions  
The Takoma Group  
Tangent Systems, Inc.  
U.S. Bank  
U.S. Dataworks, Inc.  
Unisys Corporation  
Verizon Communications  
Wachovia Treasury Services  
Wausau Financial Systems  
Wells Fargo bank

## Comments on Proposed Amendments to Regulation E

In general, the TAWPI Remittance Processing Council Members are in agreement with the efforts of the Federal Reserve to amend Regulation E to provide guidance regarding the rights, liabilities, and responsibilities of parties engaged in electronic check conversion. The Council members spent many hours reviewing and discussing the RFC, which stimulated interesting deliberations among the members. Due to the diverse makeup of the membership, we choose to make the following general comments about the RFC.

1. Regulation E coverage of merchants and other payees: The Council Membership is composed of those related to remittance processing, so we have not considered the coverage issue in great detail. We do agree with the commentary that “in an electronic check conversion transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer’s account”. We further agree with the commentary that “electronic check conversion transactions are covered by the EFTA and Regulation E if the consumer authorizes the transaction as an EFT”, and “that a consumer authorizes an EFT if notice that the transaction will be processed as an EFT is provided to the consumer and the consumer completes the transaction”. Additional arguments for the coverage are supported by the billers who feel they should not be required to absorb the liability for these particular transactions. It is also generally believed that the safe harbor language needs to be included as a part of this proposal. Also, there should be further detail and explanation on the FTC enforcement authority for unregulated service providers. Many billers in the regulated industries (e.g. telecommunications) already operate as if they were already covered by Regulation E.
  
2. Authorization language – Aspect of the proposal that includes three model clauses which allow a biller to handle ineligible items, administrative returns, local/on-us items and interplay with Check 21:
  - The Council strongly endorses the overall proposal which allows billers flexibility while adhering to the guidelines of Regulation E. Specifically, this clause

allows billers to accommodate a variety of common check conversion processing scenarios, including but not limited to:

- a. Ramping up check conversion volume during an initial implementation
  - b. Accommodating opt-out requests
  - c. Allowing for re-presentation of administrative return items
  - d. Permitting the biller to make the best decision for clearing the transaction whether it is cleared as a check, truncated as a substitute check, converted to an ACH transaction, or processed via image exchange.
- The Council prefers and endorses the standard model clause, and supports the optional clauses as long as they remain optional. If given all three options, most, if not all billers would incorporate the standard model clause.
  - The Council does not believe the standard model clause would cause any consumer harm. The only potential issue would be if the consumer was confused if his payment mechanism switched each month (e.g. from ACH to check to ACH). But this is not likely to happen, and use of the standard model clause in all cases would prevent most of the confusion.
  - Many billers have noted that budgets have been established for 2005, so any major statement changes may not be able to be accommodated until 2006.
3. Authorization language – Discussion on the aspect of the proposal that includes new required language with two components; (a.) that funds may be withdrawn from an account sooner, and (b.) that a consumer will not receive his check back.
- (a.) Funds may be withdrawn from an account sooner:
- This statement may not be true for an ACH payment if the original check is local, can be cleared as a substitute check, or can be cleared as an image exchange item.
  - Most float associated with lockbox payments is due to mail float, especially for a biller with a nationwide mix of payments
  - With the expected increase of truncated payments under Check 21 and image exchange, this aspect of the notice will not keep in step with the changing payments landscape.

(b.) A consumer will not receive his check back from his financial institution:

- Many consumers do not receive their checks back today. Banks are continuing the trend of not returning original checks to consumers.

(c.) Overall comments:

- Space on a statement or placard is usually very limited, so these additional requirements may not be feasible for on-going notification.
- The Federal Reserve and the industry should be advocating that consumers have enough money in their account at the time the check is presented.
- Before check conversion services were offered, billers were not required to detail how checks would be cleared.
- Billers would like to see a simpler notice emerge: e.g. one that states that a biller is in compliance with the applicable rules and regulations.
- Another recommendation is to include any additional wording in a general terms and conditions statement that the biller would need to distribute once a year and/or at account opening.

4. Imputed Notice – The proposal states, for ARC transactions, obtaining a single authorization from the accountholder is sufficient to convert multiple checks submitted after receiving an invoice or during a single billing cycle:

- The Council strongly endorses the proposal, especially since many remittance processors view this aspect of the RFC as the legal requirement catching up with the business practice.
- We understand that this component of the proposal specifically applies for multiple transactions, where multiple checks are received with one or more coupons, and for check only transactions, where a payment coupon or remittance stub is not received with the payment.
- The standard model clause “When you provide a check, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process this transaction as a check” must be approved in order for remittance processors to continue to endorse this aspect of the proposal, since there may be business reasons why a biller may elect not to process multiple or check-only

transactions. For example, decisions on return processing and reversal of postings, opt-out processing, and customer concerns may affect the decision-making process.

5. Comment on whether Regulation E should require merchants or other payees to obtain the consumer's written, signed authorization to convert checks received at POS:

- The Council does not support change to the commentary on Regulation E that would in the future require merchants or payees to obtain written authorization before converting checks at the POS. The rationale provided for this possible change is consistency with the NACHA rules. However, NACHA is currently working on a rule change that would allow “back office” conversion of checks received at point of sale under the ARC rules. A change in the commentary to arbitrarily distinguish between checks received via drop box or lockbox (which do not require written authorization additional to the signed check itself) and checks received over the counter would invalidate this proposed NACHA rule change.
- Certain Council members currently convert checks received via drop box at manned locations and are very interested in the proposed NACHA rule change that would permit checks received over the counter at those locations to be converted to ARC items as an extension to their existing conversion processes.

6. Transactions initiated in error – the supplementary information clarifies that a check converted in error does not constitute an electronic fund transfer where the transaction does not meet the definition of an EFT – even where notice of check conversion has been provided:

- The Council endorses this aspect of the RFC because it clarifies how to process administrative returns in a conversion environment.
- The statement will also clarify dispute resolution processes.

\*\*\*\*\* End \*\*\*\*\*