AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Nessa Feddis
Senior Federal Counsel
Phone: 202-663-5433
nfeddis@aba.com

2 July 2003

Mr. Ronald Brooks
Senior Program Analyst
Financial Processing Division
Financial Management Service
Prince Georges Center II Building
3700 East-West Highway
Room 725-D
Hyattsville, MD 20782

Re: Indorsement and Payment of Checks Drawn on the United States Treasury – Notice of Proposed Rulemaking

Dear Mr. Brooks,

The American Bankers Association ("ABA") respectfully submits our comments to the Treasury Department, Financial Management Service's ("Treasury") proposed revisions to its regulations governing the indorsement and payment of checks drawn on the United States Treasury published in the *Federal Register* on 23 April 2003. (68 Fed. Reg 20046) Among other changes, Treasury proposes:

1. To change the period of time Treasury has to examine and decline payment on a check from a "reasonable time" after the check is presented, to a "reasonable time" up to 90 days:

2. To add "the counterfeiting of a check" to the definition of "material defect or alteration," thereby expanding the reclamation procedures to include counterfeit checks: and

3. To provide that only a presenting bank may protest a declination of reclamation of a Treasury check.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

As stated in our attached 6 November 1995 comment letter to Treasury's earlier proposal, ABA strongly opposes these current proposed changes. We also associate ourselves with the comments to the current proposal submitted by the New York Clearing House on 23 June 2003.

With regard to the proposal related to the time to decline payment and adding counterfeit checks to the definition of "material defect or alternation," we do not believe that Treasury has justified its case or presented any additional information or arguments to support the proposal since the earlier proposal.

In essence, Treasury is proposing to shift the risks associated with counterfeit Treasury checks from the maker of the check, the Treasury, to the bank of first deposit. Yet, it has not explained why the bank of first deposit is in a better position than Treasury to examine a Treasury check, containing security features that Treasury itself has designed and which Treasury may change from time to time. Indeed, Treasury, as designer of the security features, is arguably in a better position to detect a counterfeit.

Nor has Treasury explained why adopting positive pay, a popular and effective fraud prevention product used by commercial banks, would not significantly reduce counterfeit and altered Treasury checks. Indeed, adopting the proposal would discourage Treasury from investigating and adopting this product, as well as other effective fraud prevention products.

Finally, we believe that adopting the proposal that provides that only presenting banks may protest a declination or reclamation would be unnecessary and unfair. See the attached amicus brief which ABA, along with the New York Clearing House, submitted in support of the petitioner in the petition for writ of certiorari in *Casa de Cambio Comdiv S.A. de C.V v. United States of America.* (The Supreme Court denied the petition.)

In conclusion, we oppose the proposal with regard to these three proposed provisions. ABA appreciates the opportunity to submit our comments to this important proposal and is happy to provide any additional information.

Sincerely

Nessa Feddis

Nessa Eileen Feddis