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April 25, 2011

Mr. Walt Henderson
Financial Management Service
401 14th Street, SW
Room 337
Washington, DC 20227

Re: Federal Government Participation in the Automated Clearinghouse,
FISCAL-FMS-2010-0003

Dear Mr. Henderson:

The American Bankers Association (ABA)¹ appreciates the opportunity to submit these comments on the Interim Final Rule (IFR) regarding Federal Government participation in the Automated Clearing House (ACH).² The IFR amends the Federal Government's adoption of the ACH rules permitting the delivery of federal payments to prepaid debit cards that meet certain criteria. ABA appreciates that FMS extended the comment period to provide input on this IFR to April 25, 2011.

ABA supports the effort to expand the type of account that is eligible to receive federal benefit payments. As noted in the IFR, the increase in the number of prepaid cards accounts in the United States indicates that a significant portion of the marketplace desires simplified transaction accounts. These consumers' preferences should not preclude them from receiving federal benefit payments via these accounts.

Overview

The Financial Management Service (FMS) issued the IFR to amend 31 CFR Part 210 governing the use of the ACH System by Federal agencies.³ The IFR became effective on January 21, 2011, and FMS extended the comment period to April 25, 2011.

The IFR finalized the proposal to allow federal payments to be made to prepaid debit cards that provide certain consumer protections. This is a result of FMS changing its

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

² 75 Fed. Reg. 80335 (December 22, 2010)

³ The ACH Rules are administered by the National Automated Clearing House Association (NACHA).

interpretation of the “in the name of” requirement that previously had the effect of prohibiting payments to pooled accounts in which the recipient’s ownership interest is reflected in sub-account records. Under the prior strict interpretation, federal payments to prepaid cards that use pooled accounts would be prohibited.

FMS now has made an exception that will allow federal payments to prepaid cards, providing that the card bears the account holder’s name and meets certain requirements:

- The account accessed by the card is held at an insured institution and meets the requirements for pass-through insurance under 12 CFR part 330, such that the cardholder’s balance is FDIC insured to the extent permitted by law;
- The account receives, voluntarily from the card issuer, all of the Regulation E consumer protections that are granted to payroll card accounts; and
- The account is not attached to a line of credit or loan agreement under which repayment from the account is automatically triggered upon delivery of federal payments.

FMS, as part of the IFR, has enacted a requirement in Section 210.5 (D) (ii) that is troubling as it is worded. It states that no person or entity may issue a prepaid card that receives federal payments in violation of the requirements noted above. Further, it states that no financial institution may maintain such an account for or on behalf of an issuer of a prepaid card if it is in violation of the requirements noted above and it receives federal payments. We recommend that this provision be amended so as to allow more flexibility for consumer choices and not foreclose popular consumer options.

FDIC Insurance

ABA supports the requirement that prepaid card accounts eligible to receive federal benefit payments must be held at insured institutions and be FDIC insured.

Regulation E Protection

ABA supports the requirement that prepaid cards accounts eligible to receive federal benefit payments provide the same Regulation E protections that are granted to payroll card accounts. This will allow consumers to receive the consumer protections related to fee disclosures, unauthorized transactions and error resolution while exempting the card issuer from expensive periodic statement requirements. Card issuers will be allowed to provide card balances and account histories in lieu of periodic statements.

Automatic Loan Repayment Trigger

ABA supports the requirement that automatic repayment of loans triggered by federal payments should not be allowed in prepaid card accounts eligible to receive federal payments. However, it is very important that card holders be allowed to make other payments, including the repayment of loans, from the prepaid card account if that feature is available. Many prepaid card accounts have an online bill payment service. This is a valuable tool for consumers to use to make timely payments. Consumers with

a prepaid card should not be denied the use of this service to repay a loan merely because they receive federal payments in that account.

ABA recommends clarifying that the restriction to prevent automatic loan payments triggered by receiving a federal deposit does not prevent the account holder from initiating manual or automated payments from the account using an online bill payment system.

Prohibiting Federal Payments to Certain Accounts

ABA recommends that this section be clarified to prevent unnecessary harm to consumers and financial institutions.

Currently, there are numerous prepaid card products in circulation that meet all applicable regulatory requirements making them eligible to receive non-Federal payments, but they do not meet the additional requirements as required by the IFR. Under the current IFR, a consumer signing up for direct deposit of federal payments to that type of prepaid card account would put that financial institution at risk through no fault of its own.

The language in the IFR, and its commentary, indicates that a financial institution with an active and legal prepaid card product could be subject to a rules violation referral to its state or federal regulator if *the card holder* signs up for direct deposit via that account, if that account does not meet the enhanced protections outlined in the IFR.

The quandary resides in the difficulty associated with identifying which prepaid card programs meet the IFR standards and which ACH credits are for federal benefits and the ability of the account holder to initiate direct deposit payments without regard for any of these issues.

Consider an account holder with a prepaid card that is not eligible to receive federal payments. That account holder recognizes the value of direct deposit and signs up for future payments to be made to that card instead of receiving a paper check. The payment will be processed by the Federal government because there is no database of “ineligible” prepaid cards account numbers for it to block. The payment will be made by the federal government at the request of the recipient for credit to that recipient’s account at the financial institution. Under this scenario, the financial institution and card issuer are in violation of the rule even though they took no action other than receiving the funds and engaged in no activity that should be restricted (or that we believe that the Treasury intended to be restricted).

Recently, FMS created special Batch Header identifier numbers as prescribed in the *Guidelines for Garnishments of Accounts Containing Federal Benefits Payments*,⁴ issued by FMS in March 2011. Unfortunately, FMS issued these guidelines to assist financial institutions in identifying federal funds received *in the past* by an account in

⁴ Financial Management Service, March 2011, http://www.fms.treas.gov/greenbook/guidelines_garnish0311.pdf

order to determine the funds that can be applied to the garnishment order. The identifier numbers were not created to have financial institutions use them to make screen and/or block decisions in “real time” based upon the account type. The identifiers outlined in the garnishment guidance are helpful for conducting a forensic review after payments are received, but it is not a viable option for screening and/or blocking payments.

In the absence of the creation of an applicable Federal Benefit Payment Standard Entry Class (SEC) Code for ACH payments that could be used to establish a screening and/or blocking scheme that banks could use to identify the source of the funds, it is not practical to place the burden on the financial institutions receiving the funds. In addition to the creation of a new SEC Code, a new Return Reason Code would also be needed indicating that the payment was returned because it was ineligible to be received by a type of prepaid card product that did not meet certain Federal government standards. The process of creating new SEC Codes and Return Reason Codes can be lengthy, and it is uncertain whether the cost of the implementation would outweigh any benefits to the unknown number of ineligible prepaid cards that receive Federal benefits.

What would happen if the financial institution does discover that a federal benefit program payment is being made to a card that is ineligible to receive the funds? The financial institution would be required to block the payment to avoid a rules violation. However, this could be devastating to the unsuspecting consumer who may be reliant on that payment to meet his or her basic needs for food and shelter. The bank meets its compliance goals, but the customer suffers financially even though the payment is directed to an endpoint designated by that customer.

ABA believes that financial institutions should not be held liable for actions that they cannot control when a consumer signs up for direct deposit to prepaid card that is technically ineligible for federal payments.

We do not believe these results to be the intent of FMS, and therefore ABA recommends that FMS clarify that prepaid card issuers and financial institutions are not liable for preventing federal ACH payments from being credited to ineligible prepaid card accounts. ABA recognizes that financial institutions and card issuers should not market or advertise ineligible prepaid card accounts for the purpose of receiving federal benefit payments, but they should not be penalized for the actions of consumers independently directing payments to the ineligible accounts.

ABA recommends that when a financial institution becomes aware a Federal payment is being made to an ineligible prepaid card account, then the rules should state that it be allowed either to bring that particular account’s characteristics up to the required thresholds within a reasonable period (e.g., 180 days), to direct payments to another bank account product that meets the requirements, or to refer the customer to FMS for consideration of the Direct Express® Card.

ABA is supportive of the FMS initiative to broaden the scope of accounts eligible to receive Federal benefit payments to include prepaid card products that meet certain conditions. We appreciate your consideration of these views and would be pleased to provide any additional information that you would find helpful.

Sincerely,



Stephen K. Kenneally
Vice President
Center for Regulatory Compliance