April 3, 2023

Bureau of the Fiscal Service
U.S. Department of the Treasury
Attn: Gary Swasey, Director
Post Payment Modernization Division
13000 Townsend Rd.
Philadelphia, PA 19154

Re: Indorsement and Payment of Checks Drawn on the United States Treasury, Docket Number FISCAL-2021-0001 (RIN 1530-AA22)

Dear Mr. Swasey,

Thank you for the opportunity for our trade association group to comment on the proposed rulemaking regarding the indorsement and payment of checks drawn on the United States Treasury (Treasury). We appreciate your concern regarding Treasury checks being negotiated after being canceled. We strongly support all reasonable measures to process checks efficiently while mitigating losses associated with canceled or counterfeit checks. All of the undersigned groups are working to create a faster and safer payment system and include the American Bankers Association (ABA), the Consumer Bankers Association (CBA), the Credit Union National Association, and the National Association of Federally-Insured Credit Unions (NAFCU).

The Treasury Check Verification System (TCVS) is a system used to verify the authenticity of a Treasury check using the check symbol and serial number, as well as the check number, check date and payment amount. The proposed rule would require all financial institutions to use TCVS (or other similar authorized system) to validate all Treasury checks to ensure that they have not been previously negotiated or canceled. The proposed rule mandates that financial institutions that do not use TCVS would assume liability associated with depositing a Treasury check that has been canceled. Currently, federal agencies that authorize check payments that are later canceled but still processed, known as a payment over cancellation, assume the loss.

The proposal notes that TCVS is being upgraded beyond its current capabilities so that it will be updated daily, instead of having a one-day lag. However, even once upgraded, TCVS will continue to rely on agencies to update the “stopped check” information, and that information may not be provided in a timely manner. The proposal would go into effect 30 days following TCVS being upgraded to same-day functionality.

This proposal would amend 31 CFR Part 240 (Indorsement and Payment of Checks Drawn on the United States Treasury) regarding a financial institution’s “reasonable efforts” to ensure that a check has not been previously negotiated or canceled. Currently, financial institutions must use their reasonable efforts only to ensure that a check is an authentic Treasury check, not a counterfeit check. The proposal would expand the definition of "reasonable efforts" to require the use of TCVS or a similar authorized system to ensure not only that a Treasury check is authentic and not counterfeit, but to validate that it has not been previously negotiated or canceled. The proposed rule would also create three other definitions for "cancellation or canceled," "stop payment or check stop," and "validity or valid check."

The net result of the proposal is a mandate that financial institutions accepting Treasury checks must use TCVS to validate that the checks have not been previously negotiated or canceled to avoid liability by being subject to a potential reclamation for up to one year after the cancelled check was paid by the Treasury.

The associations are supportive of reasonable efforts to improve TCVS and reduce losses to federal agencies. However, this proposal falls short of meeting this goal in several ways. In light of these issues, the associations offer an alternative recommendation to achieve the important goals of the proposed rule.

Alternative Recommendation

This proposal would place a significant burden on thousands of financial institutions that process a relatively small number of Treasury checks. Implementing these changes would require a significant commitment of resources for financial institutions of all sizes. As an alternative solution, the Bureau of the Fiscal Service (Bureau) should concentrate its effort to reduce payments on canceled checks within the Federal Reserve Banks, which act on behalf of the Treasury to pay and otherwise process these checks. This solution would require that the Federal Reserve Banks upgrade and integrate their own systems into an improved TCVS database, which should include real-time information about canceled Treasury checks. When a Treasury check is presented to a Federal Reserve Bank for payment, they should be able to flag a canceled check, and act to ensure the expeditious return of the check to the bank of first deposit. This would work with the deposit banks' current systems for processing and clearing non-government checks with other financial institutions with little or no cost to the banks of first deposit. The timeframes for returning these canceled Treasury checks should be consistent with those of the UCC and Subpart C of Regulation CC. Because Subpart C requires the expeditious return of unpaid checks, requiring the Federal Reserve Banks to determine whether a Treasury check has been canceled and expeditiously return the check to the bank of first deposit, this would be more effective in stopping the payment of canceled checks than requiring thousands of financial institutions at which these checks are deposited to upgrade their systems to create a process that would somehow prevent the cancelled check from being processed and cleared for collection. No check deposit system operates in this manner today. Financial institutions who do use the TCVS database do not use it to prevent the check from being processed but use it to determine if extended holds should be placed on deposit funds pending a return of the check by the Federal Reserve Bank.

Comments on the Proposed Rule

The TCVS can be accessed either manually or via an application programming interface (API). This proposal creates great challenges for financial institutions using both methods to access the data for the reasons discussed below.

1. Manual TCVS Processing

The vast majority of financial institutions will have to rely on manual TCVS processing. These are primarily smaller institutions that do not process a large enough volume of Treasury checks to warrant an API. The proposal would require extensive changes at all of these financial institutions for the training of tellers. Procedures will have to be created and then staff will need to be trained. Compliance oversight will also have to be updated. The Regulatory Flexibility Act Analysis provided in the proposed rule, which states that each transaction should only take 30 seconds, does not take into account the work that must be done before the transaction is even accepted. This additional work will no doubt slow down the in-person check deposit process, and the implementation of the procedures and compliance costs will be even greater and will have a significant impact on many financial institutions. How would this even work for financial institutions who offer remote deposit capture services to their customers or ATM check deposit services? The deposit customer is not in front of a teller where the teller can attempt to verify the check is valid through the TCVS database and then hand back the check if it cannot be validated.

Further, even with financial institutions that operate online or mobile banking services and ATMs that accept check deposits, entirely new systems that would somehow integrate with the TCVS database in real-time (prior to acceptance for deposit processing and clearing) would need to be implemented for these banks to be in compliance.

Recommendations:

- Allow 24 months after the TCVS upgrades are complete to allow financial institutions to change their operational and compliance procedures and conduct the training necessary to implement the new system. An advanced notice period of at least 30 days is unreasonable and may force financial institutions to modify their acceptance of Treasury check deposits, especially from non-depositors, until they are in compliance.
- Exempt check deposits made via Remote Deposit Capture, mailed deposits, lockbox services and ATMs from this proposal for financial institutions without API access.
- Conduct an extensive Treasury check recipient education campaign that will allow the Bureau to inform the payees that their proposal may result in financial institutions taking longer to deposit their checks, limiting the deposit channels such customers may use to deposit such checks, and limiting the number of locations that accept Treasury checks from non-depositors.

2. Automated TCVS Processing

A small number of large financial institutions comprise the population using an automated verification system today. Even those financial institutions may be using the system only for checks deposited through specific channels. For example, some financial institutions do not use the system for checks processed through an image cash letter service or lockbox processing, but do use it for branch deposits. These systems are large and complex. They are expensive to maintain and to make changes. This proposal would require significant changes to the check deposit and clearing systems that will be expensive to undertake and impossible to do in the timeline that is proposed. Financial institutions and their vendors plan system changes out one to three years in advance.

Recommendation:

- Use of TCVS should continue to be optional, allowing financial institutions to take a risk-based approach to verification, consideration of factors including check amount and customer history. This should be allowed in conjunction with the obligation of the Treasury to provide cancelled check information to the Federal Reserve Banks and requiring them to timely return any cancelled check to the bank of first deposit.
- As discussed above, the proposed effective date for mandatory use of the TCVS database is not reasonable and could result in financial institutions not accepting Treasury checks until they can come into compliance. Consider a 24-month period after the TCVS upgrades are complete to allow financial institutions and their vendors to make the required changes.

3. Validate the Validation

The proposal does not address how the manual or automated TCVS will record each validated Treasury check. Will the Bureau maintain a database of all valid TCVS record searches? Will each financial institution be responsible for maintaining records of each validation? Will the TCVS page have an "approved" message that a teller will have to print and attach to their work? Or will this validation of the validation process be tracked electronically in a way that a financial institution can generate reports? Will the TCVS system be available 24/7/365 so that checks deposited through channels that are available after hours and on the weekends will have up-to-date information and validation? Note, that if the recommendation to require the Federal Reserve Banks to timely return cancelled checks was implemented, this would no longer be an issue or concern.

Recommendation:

- The TCVS upgrade should include an automated report system that tracks each financial institution use of TCVS and a record of whether the check was validated or not.

4. Risk-Based Compliance

The proposed rule provides statistics regarding Treasury check volume in 2020 that notes of the 90.3 million Treasury checks issued in 2020, only 325 financial institutions processed more than 21,000 of them. In the same discussion, the proposal notes that a financial institution would need to process 10,500 checks per year to trigger the recordkeeping requirements of 175 staff hours per year that would constitute a significant impact on a small business. We submit that the Bureau recordkeeping requirement estimate is lower than it would be in reality, but the proposal itself provides the data that the check deposits are not distributed equally across 9,000 institutions. The compliance burden on financial institutions that process a minimal number of checks would be prohibitive.

Recommendation:

- Exempt all financial institutions processing 10,000 or fewer Treasury checks per year from the requirements of the proposed rule.

5. TCVS Upgrades

The effort to reduce the number of payments on canceled checks is admirable. However, it may be beneficial to the federal government to further upgrade TCVS to prevent check fraud. Even under the proposed rule, it is possible that someone could alter the payee name and the check would be validated nonetheless. Pointed changes to the system would help mitigate significant fraud.

Like all systems, the new TCVS system will inevitably go down for planned maintenance or for other reasons. Also, even when TCVS is up and running, response times can be lagging. What are bank liabilities when TCVS is unavailable or is unable to process in a timely manner?

Recommendations:

- Include a "payee name" field to the TCVS upgrade to mitigate fraud risk.
- Remove the liability shift from banks when TCVS is not available for planned or unplanned reasons.
- Allow financial institutions to process checks without liability if TCVS does not respond within 30 seconds.

6. Check Cashers

There is no information in the proposal related to businesses that cash checks and the banks that service them.

Recommendation:

- Clarify that financial institutions servicing check cashing businesses remain free to shift liability to them in the event of payment on a cancelled check.

7. Canceled Checks

The proposal notes that federal agencies lose approximately $98 million dollars per year due to the processing of canceled checks. This problem has two parts. The first is the issuance of paper checks is antiquated when automated solutions are readily available. The second part needs to address why agencies are authorizing checks and then canceling them. Reducing the number of paper checks issued and furthermore making sure that they should be paid and not canceled may reduce more fraud than this proposal which shifts the risk to the financial institutions who accept validly issued Treasury checks for deposit by their customers. Again, by implementing a process that requires the Federal Reserve Banks to timely return cancelled checks, the Treasury would not suffer losses (the cancelled checks would not be paid) and would save the estimated costs of $1.3 million dollars per year reconciling paid over cancellation (POC) checks.

Recommendation:

- Educate federal agencies about the benefits of electronic payments over paper checks. This could be accomplished faster if the Bureau were to shift all liability regarding fraud and canceled checks for all paper check transactions initiated by the agency to that agency.

Thank you for the opportunity to comment. The proposal as drafted would place a significant burden the banking industry. Concentrating this screening effort at the Federal Reserve Banks would better serve Treasury's goal of reducing payment of canceled checks. We look forward to continuing a constructive dialogue with goal of making TCVS a success.

Thank you for your consideration of these comments.

Sincerely,

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