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April 3, 2023

Bureau of the Fiscal Service
Attn: Gary Swasey, Director
Post Payment Modernization Division
1300 Townsend Rd.
Philadelphia, PA 19154

Re: RIN 1530-AA22 - Indorsement and Payment of Checks Drawn on the United States Treasury

Dear Mr. Swasey,

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to provide comments to the Bureau of the Fiscal Services (“Fiscal Services”) on the Indorsement and Payment of Checks Drawn on the United States Treasury and the notice of proposed rulemaking that will require financial institutions to use the Treasury Check Verification System (“TCVS”) to ensure checks are both authentic and valid. ICBA is supportive of measures aimed at tackling the increased levels of check fraud financial institutions are experiencing and looks forward to working with Treasury on ways to combat this growing issue.

The apparent intent of the proposed rule is to prevent Treasury checks from being negotiated after cancellation or payment, what is known as payments over cancellations (“POC”). Fiscal Services seeks to require use of TCVS, currently an optional tool. Banks who negotiate a Treasury check that is found to be counterfeit, amount altered, stale dated, or previously

¹*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.8 trillion in deposits, and more than \$3.8 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

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negotiated will bear the liability. Currently POCs are charged back to the certifying agency. Banks are required to confirm a Treasury' check authenticity by confirming security features such as the watermark. Existing regulations do not require the use of TCVS to confirm authenticity. The proposed changes will require banks to verify the check symbols, check serial numbers, payments amount and the status of the check (cashed, canceled, valid) via TCVS, in additions to confirming the checks physical security features. Fiscal Services will upgrade TCVS as part of the rulemaking change, providing same day data when Treasury receives a change in the negotiation status of the check.

Background

Checks drawn on the U.S. Treasury are distinctive- they have the full faith of the U.S. Government, and the funds are available to the payee the day after the banking day on which the checks were deposited². Treasury checks have security features including bleeding ink, microprinting, watermark and ultraviolet overprinting to ensure their authenticity³. Banks acting as a bank of first deposit ensure these features are present before asserting their presenting bank warranty. Many Treasury checks can be cashed at any bank, including institutions where the payee does not have an account, as well as check cashing services ("MSB"), big box retailers, grocery stores, and U.S. Post Offices⁴. As of fiscal year 2022, over ninety-five percent of the Treasury payments were electronic, however there are still 45.7 million paper checks disbursements.⁵

Treasury created TCVS in 2021, an update from the Treasury Check Verification Application ("TCVA"). It is a portal that allows institutions to validate a Treasury check by confirming the issuer date, check amount and serial number. The TCVS tool is available as a free online portal and as an application programming interface ("API") for bulk verifications of Treasury checks. TCVS information prevents various types of fraud opportunities. However, according to the U.S. Treasury, the tool is used by only 40% of Treasury checks before being negotiated.⁶

² 12 CFR 229.10

³ <https://fiscal.treasury.gov/files/reference-guidance/gold-book/check-security-features.pdf>

⁴ <https://about.usps.com/postal-bulletin/2005/html/pb22153/fin9c.html#:~:text=Treasury%20checks%2C%20not%20more%20than,that%20sufficient%20funds%20are%20available.>

⁵ <https://fiscal.treasury.gov/agency-priority-goal/>

⁶ RIN 1530-AA22

Unfortunately, check fraud is reaching record levels. Criminals are stealing mail, altering and washing checks, and defrauding financial institutions, and the US Government. According to the Financial Crimes Enforcement Network (“FinCEN”) 2022 represented a nearly 100% increase in Suspicious Activity Reports (“SARs”) related to check fraud.⁷ Stolen checks are especially detrimental to the unbanked and the underbanked, who are not utilizing direct electronic payments from the Treasury, which are less prone to fraud. Community banks do not want to be an entry point for washed, stolen or payment over cancellations entering the financial system.

ICBA Comments

ICBA supports measures to curb check fraud and appreciates the Fiscal Service’s upgrade of TCVS to allow for same-day verification for cancellations. This is an enhancement over the current one-day lag. Community banks are eager to prevent check fraud and are already actively engaging with regulators, law enforcement, mail processors, and community banks in expanding preventive measures to curb check fraud. ICBA supports Treasury’s proposed enhancement of TCVS as it aligns with ICBA’s activities to fight check fraud. The proposed TCVS enhancement in addition to the recent interagency announcement by Fiscal Services to decrease the number of EFT waivers⁸ will help reduce opportunities to commit fraud on checks drawn on the US Treasury. However, ICBA opposes mandating the use of TCVS and strongly opposes shifting the liability of POC Treasury checks to community banks.

The primary proposed TCVS enhancement – same day notice of changes in a check’s status – augments the POC protections to ensure that Treasury checks are not being negotiated after cancellation. Fiscal Services reports that POC costs the U.S. Treasury nearly \$100 million, with \$98 million in improper payments and \$1.3 million in resolution costs⁹.

While ICBA applauds Fiscal Services for its efforts to enhance its TCVS, we are concerned that banks would be mandated to use a product and process that is currently under development and, once developed, banks will be reliant on Treasury to maintain and keep up to date. The proposed rule appears to operate under the assumption that the enhanced TCVS will not face

⁷ <https://www.fincen.gov/news/news-releases/fincen-alert-nationwide-surge-mail-theft-related-check-fraud-schemes-targeting>

⁸ RIN 1530-AA27

⁹ RIN 1530-AA22

any technological difficulties. However, this assumption may put financial institutions at risk of liability should the system not operate as desired. ICBA strongly encourages Fiscal Services to maintain the optional use of TCVS and to not shift liability for POC Treasury checks. If Treasury and Fiscal Services determines that liability should shift to the bank, we request that community bankers not be liable for Treasury checks cashed or deposited during times in which TCVS is unavailable.

Although the online portal will be fully accessible after Fiscal Services makes the updates, the API for bulk uploads will likely not be as adaptable for community banks. According to Treasury data, community banks are not expected to be users of the API. Community banks are beholden to their technology providers. Providing updates will be costly and will take time. Mandating this process and shifting liability for POC Treasury checks places community banks at a disadvantage as they must rely on their middleware provider.

As previously stated, ICBA commends the efforts to reduce fraudulent and improper payments on cancelled Treasury checks, however, ICBA recommends that TCVS is enhanced to also verify the payee of the check. The current system is adequate for stopping POCs, confirming issuer date, check amount and serial number. ICBA supports the proposed enhancement of payee zip code. However, the proposed system will not yet identify checks that have not been cancelled but where the payee has been altered. Adding the ability to confirm the identity of the intended payee will help both banks and Fiscal Services further reduce losses on fraudulent checks without any additional burden on the banker.

To enhance and increase bank usage of TCVS, we recommend that efforts be made to educate and inform bank staff about the enhancements. ICBA is committed to supporting our community bank members in preventing check fraud and will offer information and training to community bank staff. However, educating and training staff, as well as updating bank procedures, will take time. ICBA respectfully asks that the compliance date be changed to a specific date at least 12 months after the final rule. TCVS is currently available, and although only 40% of checks are run through the service, we believe that with education and training there will be increased utilization of the enhanced TCVS.

ICBA also suggests that the Fiscal Services provide information to consumers about the new verification system so consumers are aware that a validation check may be performed when a check is presented. Fiscal Services expects that additional time will be needed to confirm a check is valid through the TCVS. Because of the additional time needed for verification, a pamphlet or insert included with the check, or social media campaign, will help inform consumers that the verification process may occur on all Treasury checks. This consumer education will also reassure consumers about the safety of the Treasury-issued checks.

Conclusion

ICBA recommends that Fiscal Services provide a minimum notification period of 12 months following the development and testing of the enhanced TCVS. Furthermore, all Treasury checks should include notification that institutions will perform anti-fraud procedures. ICBA applauds the continued actions of Fiscal Services to decrease paper check volume and fight check fraud. We welcome the opportunity to partner with Fiscal Services to educate community banks on using the enhanced TCVS. ICBA appreciates the opportunity to provide comments in response to this request. If you have any questions and to discuss educational outreach, please do not hesitate to contact Kari Mitchum at kari.mitchum@icba.org or Steven Estep at steven.estep@icba.org.

Sincerely,

/s/

Steven Estep
Assistant Vice President, Operational Risk

Kari Mitchum
Vice President, Payments Policy