

**Office of Chief Counsel  
Internal Revenue Service**

**memorandum**

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to: Pamela Walker  
Director Submission Processing  
Wage & Investment

from: Gerald Ryan  
Senior Technician Reviewer  
Procedure & Administration

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subject: Check Conversion Notice Requirements

This memorandum responds to a series of questions your office forwarded to us via Division Counsel, Wage & Investment regarding certain requirements to which the IRS would be subject if it were to use the “check conversion” method to process checks provided by taxpayers in payment of liabilities. Our responses to questions asked are set forth in section III of this memorandum.

**I. Background**

New technologies have both altered the traditional check payment process and created an entirely new payment system under which the parties involved have different rights and obligations. One common element of both payment systems is the requirement that the payor authorize the payment; however, each payment system specifies a different method of authorization.

Typically, the payor authorizes a check by signing it. The paper check is then routed from the payor to the payee to the payee’s bank to the Federal Reserve Bank, and finally to the payor’s bank. With the advent of technology enabling electronic transmission, the laws governing check processing were changed to permit the checks to be scanned and sent electronically along the same route that a paper check would be sent. See Check Clearing for the 21st Century Act, 12 U.S.C. §§ 5001-5018 (2009)<sup>1</sup>. This process is called “truncation” and, although it employs electronic transmission, the parties’ basic rights and obligations are controlled by the law governing payment by check.

Independently of the developments in check processing, banks and other commercial organizations developed and marketed technologies by which consumers could electronically transfer funds (e.g., ATM, debit card purchases). Because such payments were different from other existing payment systems, new rules were

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<sup>1</sup> The Check Clearing for the 21st Century Act is sometimes called the Check 21 Act.

developed for their use. The banks and clearing house operators agreed to rules governing the rights and obligations of certain parties to these transactions. See Nat'l Automated Clearing House Ass'n, *2007 ACH Rules: A Complete Guide to Rules and Regulations Governing the ACH Network*, (2007)<sup>2</sup>. Meanwhile, the Federal Reserve Board, pursuant to authority granted by Congress, also established regulations governing the rights and obligations of certain parties to these transactions. See Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r (2009); Regulation E, 12 C.F.R. § 205. The 2007 ACH Operating Rules and Regulation E both apply to government agencies.<sup>3</sup> Where a payee uses information on a payor's check (e.g., routing number, account number) to initiate an electronic funds transfer, the transaction is subject to the ACH Operating Rules and Regulation E, rather than the laws governing payment by check.<sup>4</sup> This use of a check is sometimes called "conversion."

## II. Analysis

### A. Authorization Requirements

The ACH Operating Rules and Regulation E both require that the payor authorize check conversion transactions. These authorization requirements generally mirror each other, although the ACH Operating Rules are more detailed. If it were to process a check by conversion, the IRS would have to comply with these authorization requirements, which vary based on context. The three principal contexts in which check conversion occurs are accounts receivable (ARC) entries, point-of-purchase (POP) entries, and back office conversion (BOC) entries.

#### 1. ARC Entries

An ARC entry is a one-time transfer of funds to the IRS that is initiated by the IRS pursuant to certain information taken from a check provided by the taxpayer via U.S. mail or at a drop-box location. See 2007 ACH Operating Rules §§ 14.1.7, 14.1.62, 2.9.1. The check must be the source for the routing number, account number, check serial number, and dollar amount. See 2007 ACH Operating Rules § 2.9.1.

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<sup>2</sup> This text contains the 2007 Operating Rules and the 2007 Operating Guidelines, both of which are cited as such herein. It is updated and republished yearly by the National Automated Clearing House Association (NACHA), an association of clearing house operators. The Operating Rules provide the legal foundation for NACHA ACH networks and are cited in this memorandum by section number. Parties that wish to participate in a NACHA ACH network agree to be bound by these Operating Rules. The Operating Guidelines provide guidance for interpretation of the Operating Rules and are cited in this memorandum by page number.

<sup>3</sup> Federal Government Participation in the Automated Clearing House, 31 C.F.R. § 210 (2009), incorporates by reference the 2007 ACH Operating Rules and, with certain exceptions and modifications, subjects the United States to Parts II, III, and IV of the *2007 ACH Rules: A Complete Guide to Rules and Regulations Governing the ACH Network*. By its terms, Regulation E subjects government agencies to certain of its notice requirements. See 12 C.F.R. §§ 205.2(j); 205.3(a).

<sup>4</sup> Although other regulations further alter the rights and obligations of parties to electronic funds transfers involving the IRS, such regulations are not relevant to the issue of authorization. See, e.g., Payment of Federal Taxes and the Treasury Tax and Loan Program, 31 C.F.R. § 203.

Before the IRS can initiate an ARC entry, the taxpayer must have authorized the IRS to initiate the funds transfer. See 2007 ACH Operating Rules § 2.1.2; 12 C.F.R. § 205.3(b)(2)(ii). The taxpayer has authorized an ARC entry if he or she receives a notice from the IRS and sends the IRS a signed check. See 2007 ACH Operating Rules §§ 2.1.2, 3.7.2. The notice must be provided in a clear and conspicuous manner to the taxpayer prior to the IRS's receipt of the check. See 2007 ACH Operating Rules § 2.1.4. For example, a notice that has small print or is buried in unrelated information would not meet the criteria. See 2007 ACH Operating Guidelines at 206. The notice must include the following, or substantially similar, language:

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

See 2007 ACH Operating Rules § 2.1.4; 12 C.F.R. § 205, Appendix A-6. Generally, a notice must be provided for each transfer. Typically, the notice is printed on a bill that is sent to the taxpayer by mail. However, if the IRS provides a coupon book to the taxpayer (e.g., in connection with an installment agreement), and the payment dates and amounts are set out in the coupon book, Regulation E permits a single notice on the coupon book. See 12 C.F.R. § 205, Supplement I to Part 205—Official Staff Interpretations, Section 205.3, Paragraph 3(b)(2), Number 3. The notice must be placed on a conspicuous location of the coupon book that the taxpayer can retain (e.g., on the first page or inside the front cover). See 12 C.F.R. § 205, Supplement I to Part 205—Official Staff Interpretations, Section 205.3, Paragraph 3(b)(2), Number 3. Although this practice is referenced in the ACH Operating Guidelines, neither the ACH Operating Guidelines nor the ACH Operating Rules clearly state that the practice would satisfy their authorization requirements. See 2007 ACH Operating Guidelines at 206.

If the taxpayer were to provide multiple checks in satisfaction of a single bill, the notice on that bill would suffice for all checks sent in payment of the bill. See 2007 ACH Operating Guidelines at 206; 12 C.F.R. § 205, Supplement I to Part 205—Official Staff Interpretations, Section 205.3, Paragraph 3(b)(2), Number 4.

The IRS must also establish reasonable procedures under which taxpayers may notify the IRS that a check cannot be converted (*i.e.*, the taxpayer must be able to opt out of check conversion). See 2007 ACH Operating Rules §§ 2.1.4, 3.7.1; 2007 ACH Operating Guidelines at 206-07. If the taxpayer notifies the IRS that receipt of the check does not authorize the conversion, then the taxpayer has not authorized the transfer and the IRS cannot use check conversion. See 2007 ACH Operating Rules § 2.1.4. Where a taxpayer opts out of ARC entries, the IRS cannot use check conversion on any checks drawn on that particular checking account and must refrain until the taxpayer notifies the IRS otherwise. See 2007 ACH Operating Guidelines at 207. While the IRS is not required to notify taxpayers of their right to opt out of ARC check conversion, the ACH Operating Guidelines strongly encourage such notice. See 2007 ACH Operating Guidelines at 207.

## 2. Point-of-Purchase (POP) Entries

A POP entry is a one-time transfer of funds to the IRS that is initiated by the IRS pursuant to certain information taken from a check provided by the taxpayer in person at a point-of-purchase or staffed bill-payment location. See 2007 ACH Operating Rules §§ 14.1.48, 14.1.62, 3.9.2. The check must be the source for the routing number, account number, and check serial number. See 2007 ACH Operating Rules § 2.12.2.

Before the IRS can initiate a POP entry, the taxpayer must have authorized the IRS to initiate the funds transfer pursuant to section 2.1.2 of the ACH Operating Rules. See 2007 ACH Operating Rules § 2.1.2; 12 C.F.R. § 205.3(b)(2)(ii). However, pursuant to 31 C.F.R. § 210.6(g), the requirements of ACH Rules 2.1.2 are met if the taxpayer presents the check at a location where the agency has posted the notice required by the ACH Operating Rules and the IRS provides the taxpayer with a copy of the notice.

The notice, as required by the ACH Operating Rules, must include the following, or substantially similar, language:

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

See 2007 ACH Operating Rules § 2.1.6; 12 C.F.R. § 205, Appendix A-6. The notice must be posted at the point-of-purchase in a prominent and conspicuous location. See 2007 ACH Operating Rules § 2.1.6; 31 C.F.R. § 210.6(g); 12 C.F.R. § 205.3(b)(2)(ii). A copy of the notice must also be provided to the taxpayer at the time of the transaction. See 2007 ACH Operating Rules § 2.1.6; 31 C.F.R. § 210.6(g); 12 C.F.R. § 205.3(b)(2)(ii). As with ARC entries, notices that have small print or are buried in unrelated information do not meet the criteria. See ACH 2007 Operating Guidelines at 199.

The IRS must also provide the taxpayer with a receipt containing the following information: the originator name (here, IRS), the IRS phone number, date of the transaction, transaction amount, check serial number, unique number that identifies the location of the transaction, terminal city, and terminal state. See 2007 ACH Operating Rules § 3.9.4. Furthermore, the IRS must not place the taxpayer's complete account number or identification number on the receipt. See 2007 ACH Operating Rules § 3.9.4.

## 3. Back Office Conversion (BOC) Entries

A BOC entry is a one-time transfer of funds to the IRS that is initiated by the IRS pursuant to certain information taken from a check provided by the taxpayer in person at a point-of-purchase or staffed bill-payment location for the purpose of subsequent conversion during back office processing. See 2007 ACH Operating Rules §§ 14.1.15,

14.1.62, 3.8.2. The check must be the source for the routing number, account number, check serial number, and dollar amount. See 2007 ACH Operating Rules § 3.8.2.

Before the IRS can initiate a BOC entry, the taxpayer must have authorized the IRS to initiate the funds transfer. See 2007 ACH Operating Rules § 2.1.2; 12 C.F.R. § 205.3(b)(2)(ii). Authorization for BOC entries consists of a notice and receipt of the taxpayer's signed check. See 2007 ACH Operating Rules §§ 2.1.2, 3.8.2. The notice must include the following, or substantially similar, language:

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please call [IRS phone number].

See 2007 ACH Operating Rules §§ 2.1.5; 12 C.F.R. § 205, Appendix A-6. The notice must be posted in a prominent and conspicuous location. See 2007 ACH Operating Rules § 2.1.5. Also, a copy of the notice must be provided to the taxpayer at the time of the transaction. See 2007 ACH Operating Rules § 2.1.5. As suggested in the notice, the IRS must also maintain a customer service phone number to respond to taxpayer inquiries about check conversion. See 2007 ACH Operating Rules § 3.8.6. As with ARC and POP entries, notices that have small print or are buried in unrelated information do not meet the criteria. See 2007 ACH Operating Guidelines at 215.

The IRS must also establish reasonable procedures under which taxpayers may notify the IRS at the point-of-purchase or staffed bill payment location that a check cannot be converted. See 2007 ACH Operating Rules §§ 2.1.5, 3.8.1; 2007 ACH Operating Guidelines at 215. If the taxpayer notifies the IRS that receipt of the check does not authorize the conversion, then the taxpayer has not authorized the transfer and the IRS cannot use check conversion. See 2007 ACH Operating Rules § 3.8.1. Unlike the ARC opt out provision, which applies to all checks drawn on a particular checking account, the opt out provision for BOC entries applies only to the specific check. See 2007 ACH Operating Guidelines at 215.

#### 4. Returned Item Service Fee

If the IRS were to charge a fee for insufficient funds in the taxpayer's account, an additional notice would be required. Where an ARC, POP, or BOC entry has been returned due to insufficient funds in the taxpayer's account, the ACH Operating Rules and Regulation E would permit the IRS to collect a returned item service fee. Before the IRS may initiate such an entry, the taxpayer must have authorized it. See 2007 ACH Rules § 2.1.2; 12 C.F.R. § 205.3(b)(3). The taxpayer authorizes the entry if the IRS provides a notice and the taxpayer proceeds with the underlying transaction. See 12 C.F.R. § 205.3(b)(3); 31 C.F.R. § 210.6(h). The notice must include the following language:

If the electronic fund transfer cannot be completed because there are insufficient funds in your account, we may impose a one-time fee of \$[ ] against your account, which we will also collect by electronic transfer.

See 31 C.F.R. § 210.6(h); 12 C.F.R. § 205.3(b)(3).

### *B. IRS Record Retention Obligations*

The ACH Operating Rules impose an obligation on the IRS to retain certain records from a check conversion.

#### 1. ARC and BOC Entries

The IRS must retain a reproducible and legible image, microfilm, or copy of the front of the check for two years. See 2007 ACH Operating Rules §§ 3.7.3 (ARC), 3.8.5 (BOC). At the request of FMS, the IRS must provide a copy of the front of the check to FMS. See 2007 ACH Operating Rules §§ 3.7.3 (POP), 3.8.5 (BOC). Under the ACH Operating Rules, in order to obtain a copy of the check, the taxpayer must request it from his or her bank, which would request the copy from FMS, which, in turn, would request the copy from the IRS.

The IRS must employ commercially reasonable methods to securely store (1) all checks until destruction, which may occur at any point, and (2) all banking information (e.g., routing number, account number) relating to the ARC and BOC entries. See 2007 ACH Operating Rules §§ 3.7.6, 3.8.8; 2007 ACH Operating Guidelines at 208, 216-17.

#### 2. POP Entry

The IRS must void the check and return it to the taxpayer at the point-of-purchase. See 2007 ACH Operating Rules § 3.9.2.

### *C. Privacy Act of 1974*

The requirements of the Privacy Act also have to be considered. Whenever a federal agency requests information about an individual and retains records containing that information, it must notify the individual of (1) the authority for the solicitation, (2) the purpose for which the information will be used, (3) routine uses of the information, and (4) the effect of not providing the information. See 5 U.S.C. § 552a(e)(3). As described above, the IRS must retain certain information for two years when it converts a check and is, consequently, required to provide the Privacy Act to the taxpayer. The 2007 ACH Operating Rules and Guidelines, and Regulation E do not contain specific guidance on the Privacy Act requirements; however, the model Agency Participation Agreement (APA ver.5.0), discussed in the next section, provides a sample Privacy Act notice that essentially refers the taxpayer to a Privacy Act notice on the agency's website.

#### *D. The Agency Participation Agreement (APA)*

##### 1. Several Versions of the APA

The ACH Operating Rules require that, before the IRS can initiate an entry, it must enter into an agreement with FMS under which it agrees to be bound by the ACH Operating Rules. See 2007 ACH Operating Rules § 2.1.1. While the ACH Operating Rules require only that such an agreement oblige the IRS to agree to be bound by the ACH Operating Rules, the 2007 ACH Operating Guidelines recommend that parties such as the IRS and FMS draft an agreement regarding the extent to which they will share the liability for breaches of obligations imposed by the ACH Operating Rules. See 2007 ACH Operating Guidelines at 198, 205-06, 214. Examples of such risk shifting occur in APA (ver. 3.0). See APA (ver. 3.0), §§ VI(C)(4), VI(D)(4), VIII(B), VIII(D).

While APA (ver. 3.0) is attached to W&I's inquiry, the FMS currently uses APA (ver. 5.0). Furthermore, different units within the IRS have executed various versions of the APA. For example, W&I Submission Processing executed APA (ver. 3.0) in 2005 and Beckley Finance Center executed APA (ver. 2.0) in 2003. As all versions of the APA are effective until terminated, the terms of these two executed agreements are presumably still effective. Each version of the APA imposes obligations that reflect the contemporaneous legal obligations, so the APA has changed as the law has changed. Consequently, previous versions of the APA impose some obligations that are no longer consistent with those currently imposed by 31 C.F.R. § 210 or Regulation E. See, e.g., APA (ver. 3.0), §§ VI(C), VII(B).

##### 2. APA (ver. 5.0)

The APA (ver. 5.0) imposes certain obligations that exceed those established by the ACH Operating Rules and Regulation E. Because it is our understanding that APA (ver. 5.0) is the template currently used by FMS, we examined that version here in order to highlight instances where the terms of that agreement, if executed, would extend the obligations imposed by the regulations. The following is not a comprehensive explanation of all obligations imposed by APA (ver. 5.0), as it does not include obligations that are imposed by APA (ver. 5.0) but not by the regulations.

APA (ver. 5.0) requires that all checks received in ARC or BOC transactions be destroyed within 14 days of the settlement date of the entry and in accordance with the methods described in the User Manual. See APA (ver. 5.0), § VI(B)(4). The notices required by APA (ver. 5.0) include additional information, such as a warning to taxpayers that funds will be withdrawn on the same day that the IRS receives the check<sup>5</sup> and a Privacy Act notice. See APA (ver. 5.0), § VI(C)(2), Exhibit B. APA (ver. 5.0) is silent on the subject of BOC entries.<sup>6</sup> APA (ver. 5.0) would require the IRS to

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<sup>5</sup> Regulation E and the ACH Operating Rules provide that, prior to January 1, 2010, the notice for ARC, POP and BOC entries must contain a warning to the person paying by check that the funds could be withdrawn from the account on the same day that the check is received. See 12 C.F.R. § 205.3(b)(2)(iii); 2007 ACH Operating Rules, §§ 2.1.4, 2.1.5, 2.1.6. However, as this provision is no longer applicable, we have not discussed it outside of this section.

<sup>6</sup> For example, Exhibit B of APA (ver. 5.0) provides required notices for ARC and POP entries but does

“retain copies of the customer authorization notices and disclosures required under 31 C.F.R. § 210 (see Paragraphs VI.C), for a seven-year period.”<sup>7</sup> See APA (ver. 5.0), § VII(B).

### 3. Limitations on Analysis of Obligations Imposed by the APA

All versions of the APA incorporate by reference a “User Manual” or “SOP” (depending on the version) which we do not have for review. See, e.g., APA (ver. 5.0), §§ IV(J), VIII(D). Because this incorporation by reference causes the terms of the User Manual to become terms of the agreement and because we do not have the User Manual or SOP, the full extent of the IRS’s obligations under the agreement are unknown.

Additionally, before we can determine what obligations the IRS might have under the APA, we must know which version of the APA, if any, is effective. If the IRS has executed a single version of the APA, it should provide the agreement to Chief Counsel for review and analysis of the obligations imposed under that agreement. If the effective version is unknown or if several versions are currently effective, the IRS should consider negotiating and executing a single version of the APA that is effective for the entire agency.

#### *E. Other Check Conversion Issues*

The 2007 ACH Operating Rules impose obligations and restrictions that are beyond the scope of this memo. The following is an incomplete list of those items.

- A check may not be used for an ARC, POP, or BOC entry if:
  - it contains an “On-U’s” field in the MICR line,
  - it is for an amount greater than \$25,000,
  - it is a third-party check,
  - it was issued by a creditor for purposes of accessing a line of credit,
  - it is drawn on an investment company,
  - it is an obligation of a financial institution (e.g., travelers check, cashiers check, money order), or
  - it is payable in a medium other than US currency.
- For each BOC entry, the IRS must use commercially reasonable procedures to verify the identity of the taxpayer.
- In the initial reading of a check, the IRS must use a reading device to capture the requisite information from the check; the IRS may, however, manually input the information to correct misreads by the device.

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not provide a notice for BOC entries.

<sup>7</sup> As the IRS would provide only generic notices and disclosures to each taxpayer, it is unclear whether this provision requires the IRS to retain a single copy of each notice that it uses or if it requires the IRS to retain a copy of the notices and disclosures given to each taxpayer.



Furthermore, we have not thoroughly considered any potential conflicts with the Internal Revenue Code. For example, while the ACH Operating Rules would permit the IRS to charge a fee for items returned for insufficient funds, the IRS might not be able to collect penalties other than those specifically authorized by Congress in the Code.

### **III. Responses to Questions Posed by the IRS**

1. If we implement electronic check conversion, can we provide the required notification to taxpayers by including the notice information only on the IRS.gov website and in publications and form instructions?

Posting the required notices on IRS.gov, in publications, or in form instructions would not satisfy the requirements of 31 C.F.R. § 210 or Regulation E. These regulations require the specific methods of notification described above.

One reading of section VI(C)(2) of APA (ver. 5.0) is that it would permit the IRS to post the notice required for an ARC entry on its website or in “promotional materials.” This understanding would be contrary to the notice provisions of the regulations and to confirmation from counsel at FMS that an agency cannot comply with the notice requirements for an ARC entry by posting the notice on its website or in separate materials.

While the website, publications, and instructions are not an appropriate vehicle for the mandatory notices, they might be a useful means for explaining the practical consequences of check conversion for a taxpayer. For example, taxpayers who are accustomed to floating their checks should be aware that their bank account will be debited immediately. Also, taxpayers should know that they have a right to opt out of conversion. If it is deemed impractical to include such information on a bill or on a posted sign, the required notice could, for example, provide the URL for a website where taxpayers could find supplementary information.

2. Are we required to include the notification language on all IRS notices?

The notice language is not required to be included in all IRS notices and, as long as the IRS notifies taxpayers who make payment by check as described above, there is no reason to do so. However, the IRS should examine its payment receipt system to identify scenarios in which a taxpayer whose check is converted might not have authorized the conversion. Where such an event is possible, the IRS should consider implementing procedures to provide such taxpayers with the requisite notice.

In the ARC context, the IRS would be required to provide notice on all mailings soliciting payment where the taxpayer might pay by mailing the IRS a check. Changing all such mailings to conspicuously display the prescribed notice could prove to be prohibitively costly. Rather than changing the mailings, the IRS could

arguably present the notice, in a clear and conspicuous manner, on a separate piece of paper included in the envelope with the mailing. Our office is available to discuss this option with you should you wish to pursue it.

3. Are we required to present a written notice to every taxpayer who provides a paper check to us in person if that check may be subject to check conversion, or is it satisfactory to have visible signs or other postings present in the site where the checks are received?

The check conversion described here is either a POP entry or a BOC entry, depending on whether the IRS employee at the counter processes the check at the time the taxpayer hands it over (POP entry) or stores the check for processing at a later time (BOC entry). In both cases, as discussed above, the IRS must post the required notices conspicuously in the walk-in center and provide a copy of the notices to the taxpayer. In addition, if it is a POP entry, the IRS must provide a receipt.

4. What options, if any, are available to taxpayers if they do not want us to apply electronic check conversion?

The taxpayer has the right to opt out of check conversion. Each type of entry discussed above requires the IRS to establish a reasonable process by which the taxpayer can opt out. In addition, regardless of the type of entry, the taxpayer can prevent check conversion by such measures as employing a type of check that cannot be used for conversion. If the taxpayer opts out of check conversion, he or she may pay by any other means permitted by I.R.C. § 6311 and the applicable Treasury Regulations. If the IRS wishes, it may process the check pursuant to the laws governing payment by check; that is, it may employ truncation or send the paper check to its financial agent for processing.

5. Does the law require any notification to taxpayers when check truncation is used rather than check conversion?

The laws governing check truncation do not require the IRS to provide any notification to taxpayers. However, the IRS would be obligated by the Privacy Act to provide notice if, in connection with check truncation, it retains any records from the transaction. Our response to question 6 below provides additional information regarding the IRS' record retention obligations when it uses check truncation.

6. What are the taxpayer's legal rights regarding securing a copy of their check when check truncation or check conversion is used? Is the IRS legally responsible to provide a copy of the original check that might contain notations written on the check by the taxpayer?

When check conversion is used, the IRS is only obligated to retain records to the extent required by the ACH Operating Rules, as described in the “IRS Record Retention Obligations” section above. However, for as long as the IRS retains the records, a taxpayer can request a copy from the IRS, pursuant to the Freedom of Information Act or the Privacy Act.

When truncation is used, the IRS does not need to retain a copy of the check. Under the law governing check payment, only a bank (here, FMS) is obligated to retain checks or copies of checks. Although this obligation does not ordinarily apply to payees, the liability of the bank to maintain such records can be shifted by agreement to the payee. If the IRS retains records in connection with truncation, a taxpayer can request a copy of his or her records, pursuant to the Freedom of Information Act or the Privacy Act.

Additionally, if APA (ver. 5.0) were effective, the IRS would also be obliged to “retain copies of the customer authorization notices and disclosures required under 31 C.F.R. § 210... for a seven-year period.” See, e.g., APA (ver. 5.0), § VII(B). As the IRS would provide only generic notices and disclosures to each taxpayer, it is unclear whether this provision requires the IRS to retain a single copy of each notice that it uses or if it requires the IRS to retain a copy of each of the notices and disclosures given to a taxpayer. One interpretation of this provision is that the IRS would be obliged to retain notices such as those printed on an individual taxpayer’s bill in anticipation of an ARC entry, and to maintain records of implementation of and revision to generic notices, such as those posted at a Point-of-Purchase. If the IRS were to retain records specific to a taxpayer in connection with obligations under the APA, the taxpayer could request a copy of his or her records, pursuant to the Freedom of Information Act or the Privacy Act.

Should you have any questions about the information discussed in this memorandum, please contact Spence Hanemann at (202) 622-8117 or Gerald Ryan at (202) 622-3204.