



**National Association  
of Federal Credit Unions**

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Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Education, Advocacy & Advancement

October 31, 2014

Ms. Maribel Bondoc  
Manager, Network Rules  
NACHA – The Electronic Payments Association  
13450 Sunrise Valley Drive, Ste. 100  
Herndon, VA 20171

RE: Proposal on Compliance and Operational Topics in NACHA's Rules

Dear Ms. Bondoc:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I write regarding NACHA – The Electronic Payments Association's request for comments on its proposal on compliance and operations topics on the Automated Clearing House (ACH) network. NAFCU and the entire credit union community appreciate the opportunity to share our thoughts on this matter.

NACHA's proposal would make a number of changes to its rule. Specifically, it would amend NACHA's requirements concerning: (1) Recrediting the Receiver, (2) Telephone-Initiated Entries (TEL), (3) Clarification of Receiving Depository Financial Institution (RDFI) warranties for Notification of Change, (4) Valid characters for ACH records, and (5) Disclosure requirements for point of sale (POS) entries.

NAFCU generally supports each of the changes proposed by NACHA. The proposed amendments are clearly the result of extensive engagement with industry stakeholders, and we commend NACHA for its responsiveness to feedback and input from credit unions. As discussed in more detail below, taken together, the proposed changes will clarify and improve the NACHA Operating Rules and the ACH Network. NAFCU and our members believe these

clarifications will bring consistency among various parts of NACHA's rules, bring the rules in line with common industry practice, and provide welcome cost and time savings benefits to credit unions, as well as other participants in the ACH network.

NAFCU would like to note our particular support for two aspects of the proposal: (1) Recrediting Receiver – Removal of the Fifteen-Calendar-Day Notification Timeframe; and, (2) Requiring Consumer Disclosures for those entities that provide consumers cards used to initiate ACH point of sale (POS) entries.

### **Recrediting Receiver**

The proposal would remove the fifteen-calendar-day notification period associated with an RDFI's obligation to promptly recredit a consumer account for an unauthorized debit entry. As NACHA recognizes, many financial institutions do not use this fifteen-day notification requirement, but instead recredit their consumer account holders at any time up until their deadline for transmitting an extended return under Regulation E. This proposed amendment, therefore, would align RDFI's recredit obligation with its ability to transmit an extended return Entry.

NAFCU believes this proposed amendment will not only bring NACHA's rules in line with common industry practices, but it will also provide more consistency with Regulation E's requirements for the timing of returned disputed charges. The consistency will benefit both credit unions and their members as it will help alleviate any potential confusion that could arise from the fifteen-calendar-day reference. Also, NAFCU and our members believe this amendment will enable credit unions and other network participants to more easily manage investigations of unauthorized entries, and would make compliance more manageable. Accordingly, NAFCU urges NACHA to remove the fifteen-calendar day reference from its rules concerning a RDFI's obligation to promptly recredit a consumer account for an unauthorized debit entry.

### **Consumer Disclosures for ACH cards**

The proposal would establish an Originator/Third-Party Servicer Provider obligation to provide consumer Receivers with certain disclosures when providing those consumers with cards used to initiate ACH POS Entries. Specifically, the proposal would require Originators or Third-Party Service Providers that issue ACH cards to make disclosures about overdraft charges, benefits and protections related to the use of such cards. These disclosures would need to be made in written or electronic, retainable form to a consumer prior to card activation.

NAFCU strongly supports these proposed disclosure requirements for Originators and Third-Party Service Providers that issue ACH cards. With a growing number of retailers who push and issue ACH-based debit cards to their consumers, NAFCU and our members believe this proposal is necessary and timely. NAFCU continues to hear from our members that consumers are often not aware of the differences between an ACH-based debit card and a debit card issued by their financial institution. NAFCU, therefore, agrees with NACHA that the proposed disclosures will help provide a better understanding for consumers about the applicability of overdraft protection on ACH cards issued by Originators and Third-Party Service Providers. Because credit unions, like all financial institutions, are already required to disclose the overdraft charges and protections related to debit cards they issue, NAFCU and our members strongly believe that Originators and Third-Party Service Providers that issue ACH cards should be held to the same standard.

NAFCU believes that consumer understanding of card differences is critically important to credit unions and their members. Data breaches at some of our nation's largest retailers have exposed plastic card and personal data of millions of consumers in recent months. As the number of these merchant data breaches continues to rise, consumers need to know what protections they have and from whom. Although it is not in the purview of this proposal, NAFCU has long advocated that merchants and many other entities that handle sensitive personal financial data be held to the same data security and disclosure standards as financial institutions. It is with this in mind that NAFCU supports this proposed rule to require Originators or Third-Party Service Providers that issue "ACH cards" to make the proposed disclosures in written or electronic, retainable form to a consumer prior to activation of the card.

### **Effective Date**

NAFCU and our members have consistently maintained the importance of minimizing compliance burdens on Depository Financial Institutions such as credit unions. Credit unions are already subject to extensive regulatory burdens stemming from the ever-increasing volume and content of federal regulations that apply to every aspect of their operations. All too often, regulators do not adequately contemplate the financial and human resources credit unions expend working with their staffs and vendors to bring their systems and procedures into compliance with new requirements. This proposal, however, with its March 18, 2016, effective date, provides sufficient time for credit unions to take the necessary steps to be ready for the amendments. NAFCU and our members appreciate the thoughtfulness NACHA displayed in setting the implementation timeline for the proposed changes, and we urge that it be finalized as proposed.

NACHA

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NAFCU appreciates the opportunity to share our thoughts on NACHA's identified compliance and operations topics and would welcome the opportunity discuss these matters further if you desire. Should you have any questions or concerns, please feel free to contact me at [anealon@nafcu.org](mailto:anealon@nafcu.org) or (703)-842-2266.

Sincerely,

A handwritten signature in cursive script that reads "Alicia Nealon". The signature is written in black ink and is positioned above the typed name and title.

Alicia Nealon

Regulatory Affairs Counsel