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National Association of Federally-Insured Credit Unions

July 16, 2021

Maribel Bondoc
Manager, Network Rules
NACHA, The Electronic Payments Association
13450 Sunrise Valley Drive
Herndon, VA 20171

Re: Risks of Early Funding Availability

Dear Ms. Bondoc:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the request for information (RFI) regarding the risks of early funding availability in the ACH Network. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 125 million consumers with personal and small business financial service products. NAFCU is aware of both large and small credit union receiving depository financial institutions (RDFIs) that make ACH Credit funds available to receivers earlier than the effective entry date specified by an originating depository financial institution (ODFI). This practice benefits members who need timely access to their funds to pay bills and make other time critical payments. While NAFCU acknowledges that providing funds earlier than the effective entry date may pose risks to an ODFI when an ACH was originated erroneously, risk allocation under the Operating Rules is generally appropriate and incentives ODFIs to maintain high quality origination practices.

The RFI notes that the risks of early funding availability primarily arise in cases where an ACH was initiated in error or by fraud. In these cases, the ODFI might attempt to recover funds through a reversal (when permissible), or by contacting the RDFI and requesting the return of funds. Some credit unions will work with an ODFI to return funds that were sent through an erroneous or fraudulent transaction even when the ODFI does not have a right to a reversal. However, a formal rule to reallocate risk, such as prohibiting an RDFI from returning a reversal if both the original ACH credit and the reversal are received before the settlement date, or by making the RDFI liable to the ODFI if the ODFI can demonstrate it could have corrected an error or recovered the amount of the credit before the settlement date, could burden credit union RDFIs with additional uncertainty.

Credit unions tend to be net receivers of ACH transactions and demand for faster funds availability has made early funding a competitive differentiator. Proposals to reallocate risk could result in credit unions choosing to limit early funds availability, which would create dissatisfaction with members and put credit unions at a disadvantage relative to larger institutions that are better able to absorb the costs of new risk allocation while maintaining their own early funding practices. Furthermore, reallocating risk to an RDFI could undermine support for high quality origination practices at ODFIs in cases where the ODFI is responsible for the erroneous entry. To the extent NACHA believes that early funding risks are impeding efficient operation of the ACH Network,

we encourage the association to share additional information concerning the scope and magnitude of the problem for stakeholder consideration.

NAFCU generally supports an approach that maintains the current NACHA rules. Reallocating early funding risk to RDFIs would be particularly onerous for credit unions that have a practice of making payroll funds available early. In some cases, credit unions with an employer-based field of membership may offer this type of early funding arrangement as an explicit benefit which underpins the member relationship.¹

NAFCU appreciates the opportunity to share our thoughts on the request for information regarding early funding risks. NAFCU supports a fair and effective set of rules for incentivizing high quality origination practices. To date, the current NACHA rules have enabled credit unions to improve their members' timely access to funds and we support maintaining the current risk allocation framework. Should you have any questions or require any additional information, please contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive, flowing style.

Andrew Morris
Senior Counsel for Research and Policy

¹ See American Banker, "Payday comes early for members at these credit unions," (October 4, 2017), available at <https://www.americanbanker.com/creditunions/news/payday-comes-early-for-members-at-these-credit-unions>.