

February 6, 2015

Janet O. Estep, NACHA President and CEO
NACHA – The Electronic Payments Association
2550 Wasser Terrace, Suite 400
Herndon, Virginia 20171

Re: Comments on Same Day ACH Proposal

Dear President Estep:

Thank you for the opportunity to comment on NACHA's proposal to enable same-day ACH processing. These comments are submitted by the National Consumer Law Center (on behalf of its low income clients), Consumer Federation of America, Consumers Union, U.S. PIRG, Woodstock Institute and Professor Mark Budnitz of George State University College of Law.

Consumers will benefit from faster payment options, and we support the proposal to offer the option of same day ACH payments. We also appreciate the requirement, in Phase 3, that the funds will be available for cash withdrawal the same day. We do, however, have concerns about the implications of the new interbank fee and whether it will be an excuse or precedent for higher fees on consumers for electronic payments.

Consumers Can Benefit From Faster Payments

The option of same-day ACH payments can benefit consumers in a number of situations. As NACHA's research confirmed, same-day payments could be important to consumers in these and other contexts:

- ***Payroll.*** Employees often live paycheck to paycheck, especially hourly employees. Late payrolls can impose serious consequences on families who are counting on today's paycheck to pay the rent and other immediate necessities. The proposal will provide an option for employers who need to get pay quickly to their employees in the case of emergency payrolls, missed deadlines, and last day pay.
- ***Expedited bill payment.*** Consumers who struggle paycheck-to-paycheck do not always have the luxury of paying their bills ahead of time. Families juggling jobs and child care responsibilities, and consumers with busy lives, also occasionally discover that they overlooked a bill that must be paid today. Having the option of same-day ACH payments will help consumers pay their bills on time and avoid late fees, utility service terminations, repossession, and other serious consequences.
- ***Account-to-account transfers.*** Same-day ACH payments can also help consumers move money among their accounts and get it where it needs to be so that they can access it for bills and other needs.

Having the option of a same-day ACH payment will be very useful to consumers in these and other situations.

Same Day Funds Availability is Important to Consumers

Same-day access to funds is as critical for many consumers. Same-day wage payments do little if the employees cannot withdraw their funds that day. Same-day bill payments may not accomplish their purpose if the biller does not give the consumer immediate credit for having paid on time.

Consequently, we appreciate and support the requirement in the proposed rule that, when the rules are fully implemented, the funds must be credited to the receiver's account by 5:00 pm the same day. In Phases 1 and 2 of implementation, credit entries must be credited to the receiver's account upon processing for that Settlement Date, but the receiving institution is not required to make the funds available for cash withdrawal on the Settlement Date. While we wish that same-day availability were required beginning in Phase 1, the funds availability requirement in the fully implemented rule is a critical protection for consumers.

Faster Payments and Funds Availability Will Help Consumers to Manage Their Accounts

Another benefit of faster electronic payments and faster funds availability is that it will help consumers to have better, real-time information about their account balances and transactions. As consumers move away from paper checkbook recorders and towards electronic methods of keeping track of their balances, they can be hit with overdraft and nonsufficient funds fees if their balance does not account for a transaction that is still being processed. When a consumer checks an account balance at an ATM, by telephone, online or through a mobile app, faster payments and funds availability will help to make that balance more accurate.

Same Day ACH Payments Will Continue to be Protected by Regulation E and NACHA Rules

Critical to our support for the same-day ACH proposal is the comfort in knowing that faster payments will still be protected by the consumer protection rules in the Electronic Fund Transfer Act, Regulation E and NACHA rules. Faster payments can give scammers faster access to take money out of consumers' accounts. But existing consumer protection rules will continue to give consumers the time to review their accounts and to dispute unauthorized charges, and will continue to impose duties on financial institutions to resolve errors and re-credit accounts where appropriate. Faster payments should never come at the expense of consumer protections.

The Proposed Interbank Fee Should Not be an Excuse to Increase Fees to Consumers for Electronic Payments

The one area of concern we have is the proposed 8.2 cent interbank fee. We understand that the fee is to be paid by the Originating Depository Financial Institution (ODFI) to the Receiving Depository Financial Institution (RDFI) and is not being imposed directly on consumers. It also appears that, in many situations in which same-day ACH will be used, the consumer's bank will be the RDFI and will not incur a fee – for example, if the consumer's bank is receiving a wage deposit or a debit entry initiated by the bank of a merchant. But consumers may also initiate same-day payments through their financial institutions, which might then charge the consumer. Or a merchant's bank could pass the fee on to the merchant, which in turn passes it on to the consumer.

While the 8.2 cent fee is low, financial institutions could mark it up when they pass it on to the consumer. We are also concerned that other fees, such as same-day processing fees, may be charged

to the consumer in addition to what is necessary to support the development and maintenance of same-day ACH processing.

We are especially fearful of the impact of new fees on the most vulnerable, lower income consumers. Those are the consumers who live paycheck to paycheck and may most need same day payments, but can least afford to pay for them.

It is also worth noting that same day settlement is not always critical to the consumer use cases outlined above. As they do today, a mortgage company or utility that originates an ACH debit entry can give the consumer credit for paying on time and forgo any late fee even if the payment does not settle until the same day. A bank can give the consumer access to funds that it knows are coming even if the transaction has not settled, as many banks do today with check deposits. That is, consumers could end up paying for a service that is not actually necessary in a given case.

While the proposed fee will only apply to a minority of ACH payments and not to the bulk of ACH payments made under current rules, that may change. As same-day or even real-time payments become more of the norm, payments could migrate to faster systems even in situations where immediate settlement is less critical.

We urge financial institutions to absorb the interbank fee as a cost of overhead and not to pass it on to consumers. Indeed, these improvements are long overdue and are simply part of the process of keeping the infrastructure of our payment system up to date.

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Overall, we support the proposed rules and believe that consumers will benefit by having the option of same-day ACH to receive funds and make payments. Thank you for considering our comments.

Yours very truly,

National Consumer Law Center
(on behalf of its low income clients)

Consumer Federation of America

Consumers Union

Prof. Mark Budnitz
George State University College of Law

U.S. PIRG

Woodstock Institute