



National
Consumer Law
Center

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

June 30, 2023

Submitted online

Nacha

2550 Wasser Terrace, Suite 400

Herndon, Virginia 20171

Dear Sir or Madam,

Re: Request For Information - ACH Risk Management 2023

Thank you for the opportunity to respond to the Request for Information on potential rule changes to address risk management. We support the proposals, which may help to prevent fraud in the ACH system by enhancing the responsibilities of those receiving potentially fraudulent push credit payments. But to address fraudulent induced credit push fraud, we urge Nacha to go farther and to require receiving depository financial institutions (RDFIs) to meet thresholds for requests to return credit entries.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises, including Consumer Banking and Payments Law.

Nacha is considering implementing a new return threshold for ACH credit returns. We understand this threshold to apply to the ODFI. While we support this proposal, we believe it would be far more effective if Nacha implemented a threshold for requests for returns and required RDFIs to keep those requests below that threshold.

RDFIs may be in the best position to prevent, detect and remedy fraud. They should be incentivized to engage in fraud prevention tools and to return fraudulent entries without a request from an ODFI. This will in turn minimize the need for ODFIs to request returns.

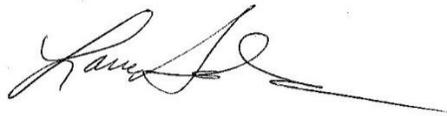
Return monitoring currently plays an important role in preventing unauthorized payments and fraud in ACH debits by requiring originating depository financial institutions (ODFIs) and payment processors to be vigilant to ensure that they are not originating payments that are

fraudulent or otherwise problematic. High return rates are a sign that the ODFIs' and payment processors' customers need more oversight. Regulators also use return rates to assess whether these parties are fulfilling their responsibilities or are, in extreme cases, facilitating fraud.

While overlooked, high rates of requests for return for credit entries can also be a sign of unauthorized payments or fraud, and monitoring those rates can play a similar role in strengthening the integrity of the ACH system. When a credit entry was unauthorized or was authorized but fraudulently induced, the receiver was not entitled to receive it and was likely participating in fraud, either directly or as a money mule. RDFIs have a duty to know their customers, to ensure that accounts are not opened with fraudulent identities, to prevent money laundering, and to prevent their customers from using their accounts for unlawful purposes.

If an RDFI has received an unusual number of requests to return entries, that is a sign that the RDFI may either have weaknesses in its customer identification protocols or in monitoring activity in its accounts. Implementing a return rate threshold will provide more incentives to conduct diligent know-your-customer screening when opening accounts and to conduct account monitoring to prevent fraud. It will also give RDFIs an incentive to spot fraud and return fraudulent payments even before an ODFI makes a request. A return rate threshold will also give regulators a benchmark to assess performance.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Lauren Saunders', with a long horizontal flourish extending to the right.

Lauren Saunders
Associate Director
National Consumer Law Center
(on behalf of its low-income clients)