

AMERICAN PAYROLL ASSOCIATION

July 16, 2021

Ms. Maribel Bondoc
Manager, Network Rules
Nacha
2550 Wasser Terrace, Suite 4001
Herndon, VA 20171
Email: mbondoc@nacha.org

Re: Risks of Early Funds Availability – Request for Information

Dear Ms. Bondoc:

The American Payroll Association (APA) thanks you for the opportunity to provide feedback concerning Nacha's request for information concerning the risks of early funds availability and whether a rule should be developed to address the issue.

A scenario where an RDFI makes funds available to its customers before the settlement date presents particular challenges for payroll professionals. It can be frustrating answering questions from employees who believe they are being paid late even though they are being paid timely. This often occurs when some employees discover that they were paid early, because an RDFI decided to make funds available on a Thursday, while others are paid timely on Friday, in accordance with the settlement date. This can call into question the credibility of the payroll professional who accurately processed the payroll file. For this reason APA suggests a rule preventing early funds availability. If it is determined that this is not feasible and early funds availability continues to be allowed under the Nacha Rules, APA recommends a rule placing the liability on the RDFI that makes funds available early.

Preventing early funds availability. The creation of a rule preventing early funds availability is APA's preferred solution to the question of where the risk of early funds availability should be placed. This would provide a single payday from the employee perspective, would eliminate frustration felt by employees who believe they are being paid late, and avoid negative consequences for payroll professionals of dealing with questions arising when employees are paid before the intended payday.

Placing the liability on the RDFI. When payroll professionals process the ACH file, they have a specific payday in mind. If an RDFI decides to make funds available earlier, the fault should not flow back to the ODFI, it should be placed on the financial institution that did not comply with the date of the intended transaction. APA supports a rule making the RDFI liable to the ODFI for the amount of an ACH credit, if it makes funds available prior to settlement and the ODFI takes steps to reverse the transaction prior to the settlement date.

About the American Payroll Association

The APA is a nonprofit professional association of over 20,000 payroll professionals in the United States. Our membership also includes representatives of large, medium, and small payroll service providers who are responsible for processing payroll for an additional 1.5 million employers. In total, the APA

represents those professionals responsible for paying an aggregate total of one-third of the private sector workforce. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers, while complying with applicable federal, state, and local laws. In addition, the APA's Electronic Payments Committee promotes the expanded use of direct deposit and electronic payments.

Survey question responses

Here are APA's responses to certain questions included in the request for information. The questions that are not answered are not directly applicable to payroll professionals or APA does not have sufficient data to answer them.

1. *Does your organization think that the existing Rules fairly balance risks between origination and receipt as it exists prior to settlement?*

Generally, yes. APA believes the rules governing ACH transactions fairly balance the risks between parties. The general rules, such as those governing the rights and responsibilities of originators and receivers, the timing of transactions, and limiting when a transaction may be reversed serve to fairly balance the risk from origination to settlement. The ability to make funds available prior to the intended settlement date is one area where APA believes the risk could be balanced more equitably. The risk could be eliminated entirely by disallowing early funds availability. Or, if that is not an option, APA believes the risk should be placed on the party, in this case the RDFI that makes funds available prior to the intended settlement date. However, it would also be unfair to the RDFI if it were liable after the fact. So, APA favors a rule that would prevent RDFI from returning a reversal for insufficient funds if it is received before the intended settlement date. Making the RDFI liable where an ODFI shows that it "could have" corrected the error before the intended settlement, but did not take steps to do so, should not benefit from its inaction prior to the settlement date.

2. *As an ODFI or Originator, how frequently does the scenario occur in which a reversal submitted before the settlement date is returned for insufficient funds?*

APA does not have any specific data on the number of reversals. However, the general consensus is that this scenario occurs rarely.

3. *As an ODFI or Originator, how frequently does the scenario occur in which an RDFI was contacted before settlement to hold or return funds, but funds were no longer available?*

APA does not have any specific data on the number of failed reversals due to insufficient funds where an RDFI was contacted prior to settlement. However, the general consensus is that this is a rare occurrence.

13. *Does your organization think that the Rules should support the ability of an ODFI to recover funds in limited scenarios when an RDFI has made funds available prior to settlement?*

Yes. While APA would prefer that the RDFI not be allowed to make funds available prior to settlement, if there is not a rule preventing from happening, APA likely would support a rule allowing the ODFI to recover funds when an RDFI makes them available prior to settlement and the ODFI attempted to reverse the transaction prior to the intended settlement.

14. *Regardless of your answer to Question 13, do you think that any of these Rules approaches would be effective in enabling ODFIs to recover funds from RDFIs?*

- a. *Prohibit an RDFI from returning a reversal for insufficient funds (R01 and R09) if it is received before settlement*

Yes. APA believes that placing the general liability on the RDFI that makes funds available prior to settlement is appropriate. APA believes that this potential rule treats both the ODFI and RDFI fairly.

- b. *Make RDFI liable to the ODFI for the amount of a credit if it made funds available prior to settlement, and the ODFI could have corrected an error or recovered the amount of the credit*

Possibly. APA would support this rule in conjunction with a rule preventing early funds availability. In that scenario, the RDFI would clearly be liable regardless of the ODFI's actions once the transaction is initiated. However, if the rules continue to allow for early funds availability, this proposed rule may not be fair to the RDFI, which could be harmed by a rule that would benefit an ODFI that discovers a problem with the ACH file, but was unaware of the issue or was aware and did not take corrective action prior to the intended settlement date.

15. *Please indicate which one of the following statements best describes your organization's position on the issues described in the RFI on the risks of early funds availability.*

- a. *Early funds availability is not a significant problem on the ACH Network, and in fact is a benefit because it gets account holders their funds earlier. No Rule change is needed.*

APA disagrees with this statement (see answers to c and d below).

- b. *Early funds availability is a problem, but a Rule change would not be effective in addressing it*

APA disagrees with this statement (see answers to c and d below).

- c. *Early funds availability is a problem, and a Rules proposal should be developed to address it*

Absent a prohibition on making funds available early, APA likely would support a rule addressing where the liability should be placed.

- d. *Early funds availability should be prohibited by the Rules*

This is APA's preferred solution.

Conclusion

Because of the negative responses that payroll professionals receive when some employees, who are paid on time, but believe they are paid late because another employee's financial institution has made payroll funds available early, APA recommends a rule that would prevent early funds availability. Absent such a rule, APA believes placing the liability on the RDFI that makes funds available prior to the settlement date would be fairer to the parties involved in the ACH transaction.

If you have any questions, please contact Curtis Tatum, whose contact information is provided below.

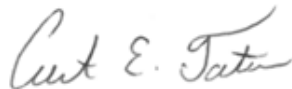
Sincerely,



Ronald D. Gilson, CPP
Co-Chair, Electronic Payments Committee
American Payroll Association



Kristine K. Willson, CPP
Co-Chair, Electronic Payments Committee
American Payroll Association



Curtis E. Tatum, Esq.
In-House Counsel and
Director, Federal Payroll Compliance
American Payroll Association
(202) 248-4650
ctatum@americanpayroll.org