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July 1, 2021

Via Electronic Submission

Nacha
2500 Wasser Terrace, Suite 400
Herndon, VA 20171

RE: Nacha Request for Comment on Third-Party Sender Roles and Responsibilities

Dear Sir or Madam:

The Independent Community Bankers of America® (“ICBA”)¹ welcomes the opportunity to provide feedback on Nacha’s [proposed rules for Third-Party Sender Roles and Responsibilities](#) in the ACH Network. Industry feedback is crucial to sustain a safe, secure, and effective network for banks and their customers. The ACH Network serves as the backbone for the U.S. payments system, and community banks value the ability to contribute toward ongoing efforts to enhance the network. ICBA supports Nacha in its sustained efforts to identify new ways to improve the ACH Network to ensure that it will continue to play a vital role in the 21st century.

Background

Third-Party Senders (“TPSs”) play an important role within the network by facilitating the origination of payments for many Originators across the country. Some TPSs also choose to process payments for other TPSs, a situation frequently—but not formally—described as a “nested relationship.” Although the majority of TPSs act responsibly, adhere to the ACH Rules, and actively mitigate risks, a recent fraud incident involving a Nested Third-Party Sender (“Nested TPS”) payroll company highlighted the need for additional clarity about this type of network participant and prompted industry considerations about strengthened controls to prevent or lessen the impacts of similar events in the future.

¹The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

The Nation’s Voice for Community Banks.®

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Nacha's request for comment outlines several proposed rule changes related to TPSs roles and responsibilities, including nested relationships and TPS Risk Assessment obligations. Specifically, the proposal seeks to define a "Nested TPS" as a TPS that has an Origination Agreement with another TPS to act on the behalf of an Originator and does not have a direct agreement with the Originating Depository Financial Institution ("ODFI").² Moreover, the proposal seeks to establish additional requirements related to TPSs, most notably by requiring a "chain of agreements" by requiring ODFI Origination Agreements with TPSs to address whether Nested TPSs are permissible, and then extend the Origination Agreement requirement to TPSs and their Nested TPS customers. The proposed rule changes will also require ODFIs to identify all TPSs that permit Nested TPS customers in Nacha's Risk Management Portal.

ICBA Comments

ICBA surveyed members to assess the impact of the proposed changes on community banks and solicit their feedback on the proposed definitions and implementation timelines. ICBA endorses the proposed formal definition of a "Nested TPS" and the requirements to establish a "chain of agreements." ODFIs can manage and mitigate risk much more effectively when they know their customers' customers; therefore, ICBA and its members support the rule changes that will require ODFIs to know whether their TPS customers allow Nested TPS relationships. These relationships should also be addressed in the ACH Origination Agreement, and ACH Origination Agreements should be required between TPSs and their Nested TPS clients. ICBA also supports the rule changes that expressly state that all TPSs, including Nested TPSs, must conduct a Risk Assessment and implement an effective risk management program based on the Risk Assessment. While there will be operational impacts to community banks, such as added training and revisions to processes and procedures, the benefits of these proposed changes outweigh the impacts to bank operations.

Collectively, these proposed actions will provide greater transparency about a growing ACH network participant group and make clear their roles and responsibilities within the network. With this clarity, community banks will be in a better position to manage TPS relationships more effectively. Clarifying the rules for TPS Risk Assessments will also help to improve the quality of payments in the ACH Network by reinforcing the importance of rules compliance and encouraging the development of more effective risk management processes and procedures. ICBA and its members support a single effective date of June 30, 2022, and six-month compliance grace period ending on December 31, 2022.

² See proposed new section 8.60 and revisions for Section 8.110.

ICBA and its members are grateful for the opportunity to comment on Nacha's proposed changes to the ACH Rules. If you have questions or require additional information about ICBA's statements, please contact me at (202) 821-4427 or by email at Brian.Laverdure@icba.org.

Sincerely,

/s/

Brian Laverdure, AAP
Vice President, Payments and Technology Policy

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