



National Association
of Federal Credit Unions
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July 2, 2015

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 2055

RE: Comments on Proposed Enhancements to the Federal Reserve Bank Same Day ACH Service

Dear Mr. Frierson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the proposed enhancements to the Federal Reserve Bank's Automated Clearing House (ACH) Service. NAFCU appreciates the Federal Reserve Board's (the Board's) proposal to provide the efficiency and integrity of the Federal Reserve Bank's ACH processing in the implementation of a new universal Same Day ACH Service. While NAFCU and our members support the industry-wide movement toward the adoption of faster payment technologies, we have concerns about the impact that the mandatory Same Day ACH proposal will have on smaller credit unions across the country. Accordingly, NAFCU and our members encourage the Board to reevaluate the calculation of the interbank fee and consider the recovery of opportunity costs for Receiving Financial Institutions (RFIs).

NAFCU understands that this Request for Comment was released in conjunction with the announcement that NACHA's members voted to finalize amendments to the NACHA operating rules and guidelines for processing ACH Payments. The new operating rules will require that all financial institutions that send or receive ACH payments implement the capability to process those payments on the same day starting in September 2016.

General Comments

The Board seeks input on whether adopting changes to the Federal Reserve Bank's operating rules to mirror NACHA's new rules for Same Day ACH would satisfy the criteria that must be met when the Board considers new services or changes to existing services. The Board requires the following criteria to be satisfied when considering new services or major changes to existing services: (i) the service must enable full long-run recovery of costs by the Reserve Banks; (ii) the service must yield a clear public benefit; and (iii) the service must be one that other providers alone cannot be expected to provide

with reasonable effectiveness, scope, and equity. *See* 80 FR 30247. NAFCU agrees with the Board's ultimate conclusion that these criteria would be satisfied and the Federal Reserve Banks must appropriately offer Same Day ACH services as ACH network providers.

The Board states that "the introduction of a FedACH Same Day service with mandatory participation by RDFIs and an interbank fee would not adversely affect the Reserve Banks' ability to recover the cost of providing the ACH service over the long run." 80 FR 30247. NAFCU agrees with the Board's view that minimal operational and technological upgrades would be necessary and that it could recover operating costs through fees. Additionally, NAFCU supports the Board's finding that there is a clear public benefit to the Federal Reserve Bank's participation. Specifically, we agree with the assessment that "without the adoption by the Reserve Banks, a significant number of depository institutions receiving ACH services from the Reserve Banks may not participate...and any corresponding public benefits would be limited." *Id.*

Furthermore, NAFCU agrees with the Board's statement that to achieve the benefits of Same Day ACH, the service must be ubiquitous and that the private sector alone cannot be expected to provide this Same Day ACH service with reasonable effectiveness. However, while NAFCU and our members believe that ubiquitous Same Day ACH capability represents a significant improvement for the nation's payment system, we continue to have significant concerns regarding the Board's proposed interbank fee and cost-recovery for RDFIs.

NAFCU and our members believe that the Federal Reserve Banks must act as the Same Day ACH operator in order to ensure ubiquity, public benefit, and long-term cost recovery, however, we believe a few changes must be incorporated into the final Federal Reserve Bank operating rules to ensure feasible implementation by RDFIs. As proposed, the cost-recovery mechanisms contemplated by the Board will disproportionately impact smaller financial institutions that will be mandated to provide this Same Day service without adequate compensation.

Mandatory Participation of RDFIs

The Board requests comment on whether the FedACH Same Day service "should remain optional and whether there are non-mandatory alternatives to achieving ubiquity." The Board acknowledges its own position that achieving ubiquity in Same Day processing is unlikely in the absence of a mandate, requiring participation by all depository financial institutions. NAFCU and our members agree that in order to create a system for faster payments, the system must be a ubiquitous and safe electronic mechanism for making a broad variety of business and personal payments that is supported by cost-effective means for clearing and settlement for all types and sizes of financial institutions. Any new faster payments system without near universal adoption will not effectively move the U.S. payments systems forward.

Additionally, in order to ensure ubiquity in adoption, NAFCU and our members strongly believe that any new system must be supported by sound economic analysis that considers implementation costs, ongoing costs, opportunity costs, and anticipated margins on providing future services for even the smallest financial institutions. NAFCU urges the Board to release the results of any economic analysis it conducted to determine that the interbank fee of 5.2 cents per transaction will result in short-term and long-term cost recovery for all RDFIs required to participate. Prior to implementing a mandatory system for all financial institutions, the Board must show that the Same Day processing costs will not disproportionately threaten the financial stability of small community-based institutions.

Interbank Fee

Under the new NACHA operating guidelines, all credit unions that operate as a RDFI of an ACH payment will be required to receive and process the payment on the same day. Credit unions that are RDFIs will be mandated to make funds available from Same Day ACH credits (such as payroll Direct Deposits) to their depositors by 5:00 PM at the RDFI's local time. Additionally, each credit union operating as an originating financial institution (ODFI) sending an ACH payment must pay the RDFI a set interbank fee for each Same Day transaction it processes.

After a significant economic analysis that included a review of likely use cases and Same Day volumes, as well as a comprehensive cost analysis to determine implementation and on-going costs for financial institutions of all sizes, NACHA released a proposed interbank fee of 8.2 cents per Same Day ACH transaction in December 2014. The 8.2 cent calculation was based on an extensive economic analysis, including a study of ODFI and RDFI costs to implement the specific features of NACHA's Same Day proposal. The research concluded that an interbank fee was the optimal method to ensure ubiquity of the service, and absent a fee, RDFIs were unlikely to recover the costs of implementing and operating the proposed Same Day ACH service. However, due to push back from stakeholder groups, including a number of retail users who only make up a minimal percentage of all ACH transactions, NACHA removed the calculation of "opportunity costs" in the final rule, setting the interbank fee at 5.2 cents per transaction.

NAFCU and our members strongly support an interbank fee as the most practical means of providing a viable business case for RDFIs and balancing the benefits of Same Day ACH across the network. However, the current interbank fee of 5.2 cents is sorely insufficient for many credit unions serving as RDFIs. While the 3-cent difference may be negligible for many large to mid-sized RDFIs, for a majority of small credit unions a 5.2 cent interbank fee is wholly inadequate to cover many of the costs they face to implement this expedited processing. For example, ODFIs would be able to submit files of Same Day ACH payments through two new clearing windows provided by the Federal Reserve Banks: (1) A morning submission deadline at 10:30 AM ET, with settlement occurring at 1:00 PM,

and (2) An afternoon submission deadline at 3:00 PM ET, with settlement occurring at 5:00 PM. While these two settlement windows allow ODFI's to offer Same Day transaction processing to more customer orders, they pose an extraordinary burden on small credit unions. Specifically to meet these settlement windows, credit unions will either have to hire more staff or to pay their current staff overtime. Many of NAFCU's smaller members who do not maintain operating hours from 9am-5pm have expressed concerns about the significant operational costs they will incur in order to process Same Day ACH transactions. The business justification to get additional funds for staff and system upgrades to support same day processing will be difficult for many small financial institutions, particularly since many of the smallest credit unions already have limited staff and budget to handle current ACH volumes.

Under the new operating rules, initial interbank fee would be set at 5.2 cents per transaction, but it could be reduced in the future after a study conducted five years after implementation. Specifically, the rule states that (i) the fee would be reduced if actual Same Day transaction volume exceeds projections by more than 25 percent during the scheduled review periods, (ii) NACHA will reevaluate the fee ten years after the rule takes full effect, and (iii) the fee will never increase. The Board requests comment on whether the interbank fee "equitably reapportions the initial implementation costs and ongoing operating costs between ODFIs and RDFIs." NAFCU again reiterates that the implementation of a new faster payment system must include a mechanism for adequate cost-recovery for even the smallest financial institutions. NAFCU and our members cannot support a mechanism for cost-recovery that cannot be raised over time, even if an economic analysis of transaction volume and ongoing operational costs for RDFIs proves to be higher than 5.2 cents a transaction. Instead, we firmly believe that the interbank fee should be calculated by on a reasonable and ongoing basis using actual economic variables that can increase or decrease over time.

Fraud Concerns

A faster payment system runs the risk of increased incidents of fraud going undetected. Processing transactions in near real-time will require effective near real-time fraud detection methods and credit checking to ensure that appropriate funds are available prior to the origination of any transaction. NAFCU and our members strongly urge that any new system for Same Day clearing and settlement must include definitive responsibilities and liabilities for the Originating institution to detect fraud at the front end of the transaction in order to reduce overall fraud in the system. Additionally, there must be a viable mechanism for RDFIs to recover the ongoing costs of receiving and processing such payments in near real-time.

Same Day clearing provides a small window of opportunity to stop or reverse payments once authorized and completed. Since the interbank fee does not cover the costs of fraud transaction monitoring, it is vital that adequate precautions are taken by the ODFI to uncover fraud in real-time. NAFCU and our members have serious concerns that the

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increasing costs of fraud prevention and recovery will come at great expense for the smaller financial institutions and their ability to effectively serve their members.

Conclusion

The Federal Reserve as the ACH Operator must strive to maintain efficiency in any system enhancements that facilitate faster payment and error resolution efforts between ODFIs and RDFIs. We believe that inherent in maintaining such efficiency lies in the proper pricing of an interbank fee and adequate fraud liability considerations at the outset. While NAFCU acknowledges that any new faster payments system without near universal adoption will not effectively move the U.S. payments systems forward, we caution that universal adoption cannot be achieved unless there is a clear mechanism available for RDFIs to recover the ongoing costs of receiving and processing such payments in near real-time.

NAFCU appreciates the opportunity to share our thoughts on the proposed amendments to the Federal Reserve's ACH Service. Should you have any questions or would like to discuss these issues further, please feel free to contact me at ksubramanian@nafcuhq.org or (703) 842-2212.

Sincerely,



Kavitha Subramanian
Regulatory Affairs Counsel