

By electronic delivery
Mbondoc@nacha.org

April 8, 2011

Maribel Bondoc
Manager, Network Rules
NACHA, the Electronic Payments Association
13450 Sunrise Valley Drive
Herndon, VA 20171

Re: Request for Comment and Information: IAT Modifications and Refinements

Dear Ms. Bondoc:

The American Bankers Association (ABA)¹ respectfully submits its comments to NACHA, The Electronic Payments Association, on the Request for Comment: IAT Modifications and Refinements (RFC) published on February 7, 2011. The RFC seeks industry feedback on the proposed amendments to the rules governing International ACH Transactions (IAT) meant to remove ambiguities and facilitate clearer and more consistent uses of the IAT application and format.

The NACHA IAT rule was developed recently and only became effective in September 2009. It expands the definition of cross border ACH entries and requires that additional information accompany each payment, such as the name and address of the sender and receiver.

The rule change was made in connection with a request from the Office of Foreign Assets Control (OFAC) to align NACHA rules with OFAC obligations. Every bank that participates in the ACH system must be prepared to receive IAT transactions and to match them to OFAC's list. Banks that originate ACH transactions will be responsible for working with their clients to determine if certain payments meet the IAT definition and contain the additional information required. Additionally, each bank's OFAC Compliance Policy and ACH Policy will need to be updated to reflect any changes adopted in a final rule.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

The IAT RFC requests comment on fifteen separate proposed rules changes. ABA recognizes that the majority of these changes will not require substantive operational or compliance adjustments be undertaken by financial institutions. However, even if the changes associated with these proposed changes are not a burden in themselves, NACHA must recognize that, in the aggregate, these changes will not be implemented without cost. Every time a term is introduced or redefined banks must educate their employees in addition to making any required updates to software and policies and procedures, and there is a cost associated with every additional use of bank resources.

ABA recognizes that thirteen of the fifteen proposals provide a benefit to the ACH network participants. This comment letter will focus on the two remaining proposals, including *Gateway Notification of Rejected Inbound International Payment* and *The Use of Post Office Boxes in Originator and Receiver Address Fields*.

Gateway Notification of Rejected Inbound International Payment

This rule change would require an entity acting as a Gateway Operator to perform additional duties. Under the NACHA operating rules, a Gateway Operator is defined as the entry point to or exit point from the United States for ACH payment transactions. Article Eleven of the *NACHA Operating Rules* contains the Obligations of Gateway Operators. Currently, Gateway Operators inform OFAC of blocked and/or rejected IAT debit transactions.

This proposal would require that Gateway Operators, upon blocking and/or rejecting an inbound IAT debit or credit entry for violation of U.S. law, notify the intended Receiving Depository Financial Institution (RDFI) of the blocked entry. According to the NACHA proposal, OFAC originally requested this rule change and recommended that the notification procedure be automated but agreed to allow network participants the freedom to determine their own notification procedures because the volume of these blocked/and/or rejected entries is so low.

ABA recommends that additional time be granted for review and consideration of this proposed rule change, for several reasons.

The proposal does not provide any supporting documentation that demonstrates that its benefits outweigh the costs for the ACH Network or to the RDFI. Under the current rules, OFAC is already receiving information on blocked and/or rejected inbound IAT debits from Gateway Operators. OFAC is better positioned to assess the information than are individual RDFIs.

Under the proposed change, if and when transactions were blocked and/or rejected at the Gateway Operator, OFAC would receive a list of all the suspect transactions, but the receiving banks would only receive notice of transactions that failed to reach their bank. In order to investigate and process this data adequately, NACHA would need to institute a special notification process that includes providing sufficient information for RDFIs far beyond what is contemplated by the proposal, including information about other non-transactions that were directed to other RDFIs.

Distributing confidential information outside its intended path is not an attractive option. Rather, OFAC, acting as a centralized analysis site, will already receive this information and be best suited to review all transactions looking for links and patterns between the blocked transactions. As drafted, this proposal is not efficient use of time for the Gateway Operators, OFAC, or the RDFIs.

It also appears that the proposal would go far beyond the processing requirements currently in place for international wires, putting ACH at a disadvantage to wire transfers. As set forth, the proposal requires blocked and/or rejected ACH transactions to be subject to more scrutiny than international wires that are returned for similar reasons. Making this rule apply to ACH transactions instead of larger wire transactions seems misdirected. If ACH transactions have a heightened risk associated with them, then this should be demonstrated before they are subject to more stringent and burdensome reviews.

As stated in the rules proposal, the number of blocked and/or rejected items is low, making the number of transactions at individual banks extremely low, not justifying the creation of a new screening database at each individual bank in the ACH Network.

The proposal does not provide any supporting guidance as to what an RDFI must do with information on non-transactions when it is received or what value it will have. It is certain that an RDFI will have to develop policies and procedures to review these potential notices of rejected transactions, even if it never receives such a notification.

ABA proposes that NACHA consider the improved results that may be gained from requiring that Gateway Operators provide OFAC, and only OFAC, with notice of all blocked and/or rejected IATs whether they be credit or debit transactions. OFAC is best positioned to evaluate the information from Gateway Operators. To add the step that NACHA is proposing requires much more careful discussion and analysis by stakeholders, policy makers, and law enforcement with a careful assessment of the trade-offs between costs and benefits.

The Use of Post Office Boxes in Originator and Receiver Address Fields

This rule change would revise the field names and content requirements for Originator and Receiver addresses to permit the inclusion of post office box addresses in IAT entries.

Currently, the rules require that all Originator and Receiver addresses used in IAT entries be physical street addresses. However, NACHA has learned that the term “address” is not defined in section (g) of 31 CFR Part 103.33 (Records to be Made and Retained by Financial Institutions). OFAC guidance has been interpreted as prohibiting post office box addresses, but a November 2003 regulatory interpretation would allow the use of mailing addresses under certain circumstances as long as the financial institution maintained the transmitter’s address on file in a retrievable format and it would be available at the request of law enforcement.

ABA recommends that this proposed rule change be subject to additional review to ensure that it does not place an undue burden on Originating Depository Financial Institutions (ODFIs) and RDFIs. The proposed rule change would loosen the requirement but put a tremendous additional burden on ODFIs and RDFIs to gather and track additional information that it currently does not have the requirement to possess.

If enacted, ODFIs would be required to create and maintain new databases that would match Originator's customer post office box addresses with physical street addresses. RDFIs would be required to match physical street addresses to alternative post office boxes of all customers who could potentially receive an IAT. This will be costly, and there is no real or perceived benefit to be gained from this increased flexibility. Originators and receivers are compliant with the requirements as currently drafted.

This issue is made more complex when an ODFI originates transactions on behalf of a third party processor. The ODFI will only have the information provided in the ACH file and will not have a direct relationship with the customer whose account is being credited or debited. If enacted as proposed, ODFIs would need to maintain a parallel database of all the customers of the third party processor to ensure that any accounts using post office boxes could be linked to the account street address upon the request of law enforcement. NACHA may want to consider placing this burden directly on the third party processor acting as the Originator that will already have that information, instead of requiring ODFIs to create duplicative and expensive databases. In this manner, when law enforcement makes a request for information, the Originator should be able to provide the addresses upon request.

Implementation Dates

The proposal recommends that two separate implementation dates be applied to the proposals outlined in the RFC: an earlier date, March 16, 2012, for those changes that do not require changes to the ACH Network infrastructure; and September 21, 2012, for those with a greater impact.

ABA recommends that all of the changes included in the final draft of the rule be implemented by September 21, 2012. The two portions of the proposal on gateway notification of rejected transactions and the use of post office boxes should not be included in any final rule. The later deadline will allow financial institutions more time to make the required changes, test the changes, educate employees about the changes, and make any updates to policies and procedures that will be needed.

In summary, we encourage NACHA to adopt thirteen of the fifteen rules changes proposed. On the matters of Gateway Notification and the use of post office box addresses, we urge you to revisit these matters prior to issuing any final rules. If you have any questions about these comments, please contact Stephen Kenneally at 202.663.5147 or via email at skenneally@aba.com.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen K. Kenneally". The signature is written in a cursive style with a large, stylized 'S' and 'K'.

Stephen K. Kenneally
Vice President
Center for Regulatory Compliance