CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

Submitted via email: mbondoc@nacha.org

January 10, 2014

Ms. Maribel Bondoc
Manager, Network Rules
NACHA – The Electronic Payments Association
13450 Sunrise Valley Drive, Suite 100
Herndon, VA 20171

Re: NACHA Proposed Rule on Improving ACH Network Quality

Dear Ms. Bondoc:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding NACHA – The Electronic Payments Association's proposed rule on improving Automated Clearing House (ACH) network quality, as part of a broader strategy to improve risk management. By way of background, CUNA is the largest credit union advocacy organization in this country, representing state and federal credit unions, which serve about 99 million members. We have also filed a separate comment letter today on NACHA's related proposed rule on ACH network risk and enforcement topics.

This proposed rule aims to reduce exceptions by establishing a system of economic incentives for Originating Depository Financial Institutions (ODFIs). An ODFI would pay fees based on exceptions to partially offset the Receiving Depository Financial Institution's (RDFI's) costs for exception processing and customer service. NACHA proposed, but did not adopt, a similar proposal on network return entry fees for unauthorized debits in 2004. Under the current proposal, an ODFI would pay a fee to an RDFI in the range of: 1) $.10 to $.40 per return based on incorrect account data; 2) $.25 to $.75 per change, when an RDFI corrects information and sends a Notification of Change (NOC); and 3) $1.50 to $2.50 per return related to an issue with the Receiver's authorization.

CUNA appreciates that NACHA is taking steps to improve ACH network quality by looking into ways to reduce exceptions. Credit unions generally originate higher quality transactions and are not likely to be significantly impacted, and would receive fees to offset costs incurred for exception processing and customer service. However, some credit unions oppose the concept of fees paid by ODFIs based on returns, because ODFIs may not be able to fully control the transactions originated by the Originators, and they feel this approach is not targeted to reduce risk. We ask NACHA to minimize costs on credit unions that may be affected and minimize unintended consequences. In addition, we offer other recommendations to improve the proposal.

A top concern is that ODFIs may not be able to fully control transactions originated by the Originator. Some exceptions are related to errors or spurious disputes by consumers, as noted by NACHA's study that was done by a payments consulting firm. For example, Originators may be able to show that certain disputed returns were properly authorized by the consumer, even though there is a subsequent return. NACHA should also consider incorporating information about the reasons and outcomes for returns.

In addition, NACHA should look into potential alternatives that could be more targeted and less costly to address problem Originators with a pattern of, and the highest level of exceptions. Further, we ask NACHA to continue to coordinate closely with, and consider the actions taken by, the CFPB, prudential financial regulators, and others on further regulating non-depository institution entities.

NACHA should fully assess and minimize the potential unintended consequences from the proposed changes, including with consumer access to payments. Further, NACHA should account for effects from the concurrent proposed rule on ACH network risk and enforcement topics that would reduce return rate thresholds.

If NACHA proceeds with this proposal, we ask NACHA to minimize costs on credit union ODFIs and RDFIs. While all ODFIs would have to pay fees based on exceptions, credit union ODFIs that originate higher quality transactions would likely receive a greater number of exceptions in their role as RDFIs and would likely be a net recipient of fees. Responsible ODFIs, including credit unions, would also be impacted with higher costs that result from potential changes with policies and procedures, risk management, and system changes to send and receive fees. To help minimize these costs, NACHA should provide additional risk management tools and resources to assist ODFIs. RDFIs would generally benefit from lower returns and exceptions, and would receive fees to offset costs incurred for exception processing and customer service. RDFIs would also have system changes to receive fees.

We recommend that before moving ahead with the proposal, NACHA should first conduct a robust, comprehensive study that includes financial institutions of all types and sizes to measure better the costs incurred by all RDFIs for handing exceptions. The proposal includes reported information from 13 to 14 financial institutions regarding the three cost categories, and this data was extrapolated to provide estimated cost data for all other participants on the ACH network. These estimated costs may be underestimated because the reported ACH-processing costs do not include other costs, including customer service and dispute resolution. There is likely a range of costs depending on the size of financial institutions, including credit unions, depending on their ACH processes and third-party providers.

We understand NACHA is currently exploring a number of options for a system to assess, collect, and distribute quality fees among ODFIs and RDFIs. There should be a representative panel to oversee this process for quality fees, and the panel should be composed of different industry participants, including credit unions. We recommend that a system be set up for evaluating the fee structure and updating the fee over time. Further, NACHA should provide additional resources to assist financial institutions with these changes, and minimize costs and system changes on institutions and their payment providers.

Finally, we recommend a delayed compliance date at least three months later than the proposed March 20, 2015 effective date to provide an adequate timeframe for financial institutions to implement these rule and system processing changes. A delayed compliance date is appropriate based on the need of NACHA to conduct additional research, followed by system changes associated with a new fee system, as well as potential, additional changes from NACHA's related risk and enforcement topics proposal.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact CUNA SVP and Deputy General Counsel Mary Dunn or me at (202) 508-6733.

Sincerely,

Dennis Tsang

Dennis Tsang
CUNA Assistant General Counsel for Regulatory Research