

August 2, 2021

Via Electronic Submission

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. OP-1749

Dear Ms. Misback:

Nacha welcomes the opportunity to submit this comment letter to the Board of Governors of the Federal Reserve System (the “Fed”) in response to the notice and request for comment regarding Potential Modifications to the Federal Reserve Policy on Payment System Risk to Expand Access to Collateralized Intraday Credit, Clarify Access to Uncollateralized Credit, and Support the Deployment of the FedNow Service (the “Proposal”).

Nacha has been an ardent advocate for the improvement of the U.S. payment system, both in the public and private sectors. As the Fed expands and enhances its services to support FedNow, its own instant payment system, Nacha strongly encourages the Fed to make those services available concurrently and on the same basis to all payment systems, including the Automated Clearing House (“ACH”) Network. Competition among payment systems should be based on the quality, characteristics and benefits of the payment systems themselves, rather than on their differential access to Federal Reserve-provided utilities. Any ancillary tools and services adopted to support FedNow, including 1) access to intraday credit, 2) liquidity management, and 3) seven-day accounting, must be made uniformly available without discrimination to all payment systems, settlement agents, and depository institutions otherwise qualified to use Federal Reserve services.

I. Background: Nacha and the ACH Network

Nacha governs the thriving ACH Network, the payment system that drives safe, smart, and fast Direct Deposits and Direct Payments with the capability to reach all U.S. bank and credit union accounts. Nearly 27 billion ACH Network payments were made in 2020, valued at close to \$62 trillion. The ACH Network is governed by the *Nacha Operating Rules* (“Nacha Rules”), which are developed and maintained by Nacha. In our role as the standards organization for payments through the ACH Network and author of the Nacha Rules, Nacha represents over 10,000 participating financial institutions of all sizes and types throughout the United States, both directly and through 10 Payments Associations. Nacha’s rules development process includes input and participation from all types of organizations, including both business and consumer end-user organizations, as well as the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

II. Background on Nacha's Participation in the Journey to Faster Payments

Nacha has participated in the dialogue facilitated by the Fed among payment industry participants regarding faster payments and other payment system improvements. In this regard, Nacha has served as a member of each of the Faster Payments Task Force, the Governance Framework Formation Team, the Faster Payments Council and the Secure Payments Task Force. From its vantage point as the industry organization charged with oversight of the ACH system and its ongoing evolution, Nacha brings valuable insight to these conversations. Nacha views the effort to improve the U.S. payment system as a public-private partnership and appreciates the Fed's efforts to date to coordinate discussion among industry participants and to support improvements that benefit all participants in the payments industry for the public's benefit.

Among other enhancements, Nacha has advocated since at least 2013 for the extension of operating hours of the Fedwire Funds Service ("Fedwire") and the National Settlement Service ("NSS") to facilitate faster payments, including through the extension of Same Day ACH settlement. Nacha acknowledges and appreciates the Fed's partnership and support in the recent incremental expansion of the operating hours of those services to support the expansion of Same Day ACH settlement. This expansion provided immediate public benefits in terms of faster payments for payrolls, bills and invoices, account transfers, and many other uses.

In response to the Fed's introduction and refinement of its FedNow proposals, Nacha has maintained and expressed a consistent view that new and enhanced Fed ancillary services and tools developed to support FedNow should be made available on the same basis for all payment types – not just FedNow or other instant payment systems. The Fed itself has historically made its interbank settlement services available to all payment systems on a system-agnostic basis, and also has made explicit commitments to making improvements to these services. Specifically, in January 2015, the Fed released its Strategies for Improving the U.S. Payment System Report ("SIPS Report") that included five strategies for the improvement of U.S. payment systems. Strategy 5 included a three-phase plan to implement the Fed's intention "to enhance the [NSS] to make it more attractive as a settlement vehicle for private-sector arrangements" with the exploration of 24x7 operating hours.¹ Further, the Fed's notice of August 9, 2019 announcing the new FedNow service also stated that with respect to the liquidity management topic, a follow-up proposal would be made to further expand the operating hours for NSS and Fedwire.

While the Fed has made some incremental progress towards these commitments since the SIPS Report was published in January 2015, more significant progress on the modernization of system-agnostic interbank settlement and liquidity management has lagged. Nacha strongly encourages the Fed to renew its commitment to the strategy outlined in the SIPS Report, and to follow through on its stated intention to propose an additional extension of operating hours for NSS and Fedwire.

A system- and sector-neutral approach would yield significant public benefits, which have been recognized by the Fed in its Notice and Request for Comment of Federal Reserve Accounts to Support Interbank Settlement of Faster Payments. Specifically, the Fed stated that

¹ SIPS Report at 21.

“[e]xpanded hours for the Fedwire Funds Service and NSS could also benefit other retail payment services. For retail services that conduct interbank settlement on a deferred basis, including certain faster payment services and traditional payment card services, expanded hours could enable these services to settle net interbank obligations at times not currently possible, including weekends and holidays. Expanded Fedwire Funds Service and NSS hours could also benefit ACH payments by enabling additional settlement windows.”² In this regard, Nacha reiterates its position as previously articulated in our December 13, 2018 comment on the 2018 Faster Payments Proposal and in its comments in response to the Fed’s request for comments on Federal Reserve Actions to Support Interbank Settlement of Faster Payments. Specifically, Nacha believes that making these types of Fed utilities available to all payment systems without discrimination is essential to maintaining a robust and competitive payments landscape in the U.S.

Nacha encourages the Fed to expand NSS operating hours to a 24x7x365 schedule concurrently with the introduction of FedNow. Expansion of NSS hours to 24x7x365 would provide the ACH and other users with parity with respect to access to Fed-provided settlement services. In addition, expansion of the NSS operating hours to a 24x7x365 schedule would be consistent with the Fed’s own stated intention in the SIPS Report discussed above. Even with the recent, incremental expansion of NSS to support the recent Same Day ACH settlement windows, financial institutions in the Pacific Time Zone are not able to settle ACH transactions on the current day after 3:00 pm PST, which is a major barrier to extending the transacting day and responding to end-user needs. Without a comparable 24x7x365 expansion of the operating hours of the NSS, payment systems that rely on the Fed’s NSS services for settlement will be at a significant competitive disadvantage to FedNow and other instant payment systems that are backed by joint Reserve Bank accounts. To the extent that expansion to 24x7x365 is not feasible as the next step, the Fed should identify the next feasible step(s) in expansion (e.g., 22x6, Saturday hours, holiday hours, etc.), and provide a roadmap to the industry to achieve 24x7x365 settlement.

III. Comments on the Proposal – Fed Services in Support of FedNow Should be Sector- and System-Neutral

Nacha does not object to the Fed’s development, or enhancement, of services in support of FedNow. However, Nacha keenly believes that the Fed should not, as certain elements of the Proposal would do, prioritize FedNow and other instant payment systems backed by Reserve Bank joint accounts over other payment system models. By enhancing Fed services only for FedNow and instant payment systems backed by Reserve Bank joint accounts, the Fed is effectively deeming this payment system model as “the winner” among payment system models. This self-determined preferred system runs in conflict with the Fed’s stated goal of “provid[ing] payment and settlement services on an equitable basis and maintain[ing] a fundamental commitment to competitive fairness...”³ Further, by limiting the Proposal to support only FedNow and instant payment systems backed by joint accounts at the Reserve Banks, the Fed is not fully serving the public interest, which demands both efficient batch payments as well as

² Id at 39316.

³ Board of Governors of the Federal Reserve System, Federal Reserve Actions to Support Interbank Settlement of Faster Payments; Notice and Request for Comment, 84 Fed. Reg. 39297 at 39303 (August 9, 2019).

single-entry, instant payments. Batch payment systems using deferred net settlement offer an efficient way to settle tens of billions of payments, and improvements to batch services will support greater end-user choice in payment types.

Competition is essential to an innovative and dynamic payments industry in the U.S. Prioritizing Fed services for instant payment systems risks tipping the competitive scales in favor of such payment system models by denying to other payment service models, such as deferred net settlement services (like the ACH), services that can only be provided efficiently by the Fed in its role as a central bank. There simply is no private sector alternative to core Fed services like NSS. If access to enhanced Fed services is limited to only certain types of payment system models, the inherent value of those services will be distorted and may result in selection by financial institutions of payment services that may not have been selected, but for the offering of Fed services not available to other payment providers. Alternatively, competition on a level playing field would enable financial institutions to evaluate payment services based on price and quality, rather than access to Fed services.

While Nacha understands that the Fed intends to bolster competition among instant payment system models by developing FedNow, by enhancing Fed services only for FedNow and other instant payment services, the Fed is, at the same time, diluting competition among other types of payment system models. Accordingly, each of Nacha's specific comments on the Proposal below encourages the Fed to provide new and expanded Fed services in support of payment systems on a system-neutral basis. Further, to the extent benefits of the Proposal do not extend equally to all payment systems, the cost of such benefits should not be imposed upon those payment system participants who are not eligible to receive such benefits.

1. Intraday Credit

Nacha supports payment system enhancements that include risk management tools and has previously expressed support for, and continues to support, the Fed making risk management tools available for faster and instant payments. However, Nacha is concerned that the Proposal limits access to intraday credit on a 24x7x365 basis to FedNow participants and participants in private-sector instant payment services backed by joint accounts at the Reserve Banks that use the FedNow liquidity management tool ("LMT") to transfer funds between the master accounts and joint accounts at Reserve banks.

Moreover, while 24x7x365 intraday credit would be made available only to FedNow participants and users of the FedNow LMT, the Proposal would assess the increased daylight overdraft and penalty fee calculations based on the 24 hour business day on all institutions, not just those participating in FedNow or using the FedNow LMT. Accordingly, institutions that do not participate in FedNow or that are not eligible to use the FedNow LMT would be subject to increased costs without the benefit of access to 24x7x365 intraday credit. Not only would those ineligible institutions be at a competitive disadvantage by not having access to the LMT, they would also be harmed economically with the imposition of increased costs for which they do not have access to a countervailing benefit.

Accordingly, Nacha strongly urges the Fed to make intraday credit available to participants in all payment systems on a 24x7x365 basis. To the extent the Fed does not provide intraday credit or another comparable liquidity management tool available to participants

in other payment systems, Nacha encourages the Fed to impose the increased fees only on financial institutions that are eligible for expanded access to intraday credit.

2. Overnight Overdraft Penalties

The Proposal uniformly eliminates the Overnight Overdraft fee-escalation feature for all institutions, but only eliminates the automatic multi-day charge for institutions that participate in FedNow (because only FedNow participants will be allowed to eliminate a negative balance during a weekend or over a holiday). Accordingly, by not enhancing Fed services to allow participants in all payment systems to eliminate negative balances over weekends and holidays, this fee structure discriminates against institutions that are not FedNow participants. Similar to Nacha's comment with regard to intraday credit availability and related increased costs, Nacha encourages the Fed to create service offerings and fee structures for Overnight Overdraft services that will not disadvantage financial institutions that do not participate in FedNow.

3. Seven-Day Accounting

The Proposal states that with the expansion of 24x7x365 operating hours for FedNow, the Reserve Banks will also implement a seven-day accounting regime, and that end-of-day balances will be reported for each FedNow participant each business day. However, the Proposal does not provide sufficient detail to enable commenters to understand the proposed implementation of seven-day accounting. Accordingly, Nacha encourages the Fed to further clarify its plan for seven-day accounting and seek further public and industry input and comment on a more detailed plan. Areas of further clarification should include (a) the scope of application for seven-day accounting and specifically whether it will apply generally to other Fed supported services or just for FedNow; and (b) how the Fed proposes that it and the industry will manage seven-day accounting across different accounting models applying to the same Fed account. As with other Fed services supporting payment systems, Nacha strongly believes that seven-day accounting should be available broadly across all Fed-supported payment systems and not just for FedNow or private instant payment systems backed by Reserve Bank joint accounts.

IV. Conclusion

In conclusion, as the Fed develops and implements FedNow and enhances the services it offers to support that payment system, Nacha strongly encourages the Fed to continue its role as a supporter of payment services on which all payment systems can rely on a system- and sector-neutral basis. To that end, Nacha reiterates its request for sector- and system-neutral availability of Fed services that support payment systems and non-discriminatory pricing for overdraft and other Fed services. Moreover, Nacha encourages the Fed to seek industry input on the Fed's detailed plans for the services it intends to expand to support FedNow, such as the LMT and seven-day accounting.

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Nacha appreciates the opportunity to provide comments in response to the FedNow Proposal. If you have any questions regarding our comments, please do not hesitate to call me at (703) 561-3927, or our counsel at Sidley Austin LLP in this matter, David E. Teitelbaum, at (202) 736-8683.

Sincerely,



Jane E. Larimer
President and Chief Executive Officer

cc: David E. Teitelbaum, Esq.