Meaningful Modernization

Request for Comment and Request for Information

February 18, 2020
Meaningful Modernization – Proposal Rationale

• Nacha is seeking comment and feedback from the industry on a set of Rules proposals and a related topic, collectively referred to as “Meaningful Modernization”

• The overarching purpose of these proposals is to improve and simplify the ACH user-experience by
  • Facilitating the adoption of new technologies and channels for the authorization and initiation of ACH payments
  • Reducing barriers to use of the ACH
  • Providing clarity and increasing consistency around certain ACH authorization processes; and
  • Reducing certain administrative burdens related to ACH authorizations
Meaningful Modernization – Request for Comment Summary

• Nacha is issuing for comment five specific proposals to amend the Nacha Rules:
  1. Explicitly define the use of standing authorizations for consumer ACH debits
  2. Define and allow for oral authorization of consumer ACH debits beyond telephone calls
  3. Clarify and provide greater consistency of ACH authorization standards across payment initiation channels
  4. Reduce the administrative burden of providing proof of authorization
  5. Better facilitate the use of electronic and oral Written Statements of Unauthorized Debit

• Responses on these proposed changes are requested by April 3, 2020
Meaningful Modernization – Request for Information Summary

• In addition to the RFC, Nacha is requesting industry information and feedback on an additional topic on the potential to allow ACH Originators to refute the basis of a return as unauthorized
  • Potentially, by providing evidence of a valid authorization to a third-party arbiter
• This topic is not a proposal to amend the Nacha Rules, but rather an in industry consultation on whether there would be benefits to pursuing such rule change (a Request for Information)
• Responses to the RFI are also requested by April 3, 2020
Request for Comment
Meaningful Modernization

Issue date: February 18, 2020
Responses due: April 3, 2020
Meaningful Modernization – Request For Comment

Nacha invites comments on five specific Rules proposals. In addition to comments on each specific proposal (as further described in this RFC), industry feedback and perspectives are requested on the following aspects of the overarching purposes:

• Would these proposed changes improve the ACH experience for financial institutions, and business and consumer users of the ACH?
• Would these proposed changes have an overall positive effect on the ACH Network, and on your organization?
• How would these proposed changes impact your organization?
Proposal #1 – Standing Authorization

• This proposal would explicitly define a “Standing Authorization”
  • A Standing Authorization would be defined as an advance authorization by a consumer of future debits
  • Under a Standing Authorization, future debits could be initiated by the consumer through some further action, as distinct from recurring entries which require no further action and occur at regular intervals
Proposal #1 – Standing Authorization - Purpose

The purpose of defining a Standing Authorization is to better enable businesses and consumers to make payment arrangements for relationships that are ongoing in nature, especially those that make use of new technologies and channels for ongoing commerce.

- The current authorization framework for consumer ACH debits encompasses recurring and single payments.
  - Recurring payments occur at regular intervals and are for the same or similar amount – a monthly mortgage payment or utility bill.
  - A single entry is a one-time payment, and can be between parties that have no previous relationship, such as in a purchase; or that have a relationship but the payment is not “recurring” – a single payment on a credit card account.
  - ACH Originators that have, or want to use, a different model for ongoing commerce and ACH payments either have to figure this out themselves or forego the use of ACH.
- Establishing a framework for standing authorizations in the Nacha Rules is intended to fill this gap between single and recurring payments, and help ACH Originators understand how to do it.
Proposal #1 – Standing Authorization - Examples

Examples of potential uses of a Standing Authorization

• Bill payment
  • A Standing Authorization could allow a consumer to initiate payments on a credit card account intermittently and via various channels (phone, online, mobile app, text, Alexa, etc.)

• E-wallet / personal financial management
  • A consumer could provide a Standing Authorization for future debits related to using an e-wallet or other personal financial management service

• Personal or home digital assistants
  • A Standing Authorization could be used in conjunction with services and apps that allows future e-commerce and payments to be initiated via Alexa, Echo or similar functionality

• Account transfers
  • A consumer provides a Standing Authorization to authorize funding debits to a brokerage account based on investment activity
Proposal #1 – Standing Authorization – Other Aspects

• In addition to defining a Standing Authorization, other aspects of the proposal include:
  • A Standing Authorization could be obtained in writing or orally (see Proposal #2 – Oral Authorizations)
  • Individual payments initiated based on the Standing Authorization would be defined as Subsequent Entries
  • Individual Subsequent Entries can be initiated in any manner identified in the Standing Authorization
Proposal #1 – Standing Authorization – Other Aspects

• This proposal also would allow Originators some flexibility in the use of SEC codes for individual Subsequent Entries
  • Allow an Originator to use the TEL or WEB codes for Subsequent Entries when initiated by either a telephone call or via the Internet/wireless network, respectively, regardless of how the Standing Authorization was obtained
  • In such cases, the Originator would not need to meet the authorization requirements of TEL or WEB, but would need to meet the risk and security requirements associated with those codes
• See SEC Code scenarios on the next slide (slide 12)

• Scenario 1
  • An Originator that obtains a standing authorization on a paper form with a wet signature (current Rules result in PPD entries) would be allowed to use TEL or WEB for individual payments initiated by a telephone call or via the Internet/wireless network, respectively

• Scenario 2
  • An Originator that obtains authorization on a telephone call (current Rules result in TEL entries) would be allowed to use WEB for individual payments initiated via the Internet/wireless network

• Scenario 3
  • An Originator that obtains authorization via the Internet/wireless network (current Rules result in WEB entries) would be allowed to use TEL for individual payments initiated via a telephone call
Proposal #1 – Standing Authorization – Expected Benefits

• The proposal is intended to make it easier to use ACH payments in many situations
  • Enable the authorization and initiation of ACH payments across a broader set of technologies, channels and business methods
  • Provide some flexibility in the use of certain consumer SEC Codes (among PPD, TEL and WEB) to better accommodate variations in Originator’s practices and systems
  • Provide a clearer understanding of what should be included in an authorization in scenarios that aren’t addressed in existing rules for single and recurring entries
  • Provide an authorization framework under which Originators could add new payment initiation methods and channels
Proposal #1 – Standing Authorization – Potential Impacts

• ODFIs and Originators may choose to make use of Standing Authorizations and Subsequent Entries, but will not be required to
• Originators that want to make use of this authorization method may need to modify or add to their authorization practices and language
• RDFIs should experience no impacts on the receipt and posting of Entries
• Some volume of Subsequent Entries may have a different SEC Code than under the existing rules – i.e., related to the method/channel used for payment initiation, rather than the method/channel used for authorization (for example, WEB if initiated online instead of PPD if authorized via paper)
  • Potential impact on the application of risk management practices specific to SEC codes
  • Potential impact on the tracking of SEC Code volume, returns, and return rates
Proposal #1 – Standing Authorization – Request for Comment

Nacha requests comment on all aspects of this proposal, including:

• Would this proposed change address a barrier to using ACH payments?
• What business methods or commerce channels could make use of this?
  • As an Originator, would you make use this change; and if so, how?
• When originating consumer ACH debits, does the choice of SEC Code ever present difficulties?
  • Does your organization ever use a different SEC Code than the one indicated by the original authorization method?
  • Would this proposed change make that situation easier for your organization to comply with the Rules?
• Would the proposal improve quality in the ACH Network? Would it introduce any additional risk?
• As an RDFI, is it important to know if an entry was part of a Standing Authorization? Does “SEC Code flexibility” toward greater use of TEL and WEB present any challenges?
Proposal #2 - Oral Authorization

• This proposal would define and allow “Oral Authorization” as a valid authorization method for consumer debits distinct from a telephone call
  • Currently, only the TEL transaction type has requirements and addresses risks specific to an oral authorization; but it is specific to a telephone call
  • Many newer methods and channels make use of verbal interactions and voice-related technologies
Proposal #2 - Oral Authorization - Purpose

• The purpose of allowing the use of Oral Authorizations more broadly is to better enable businesses to adopt ACH payments in transactional settings that make use of verbal interactions and voice-related technologies

• Examples of how Oral Authorizations can be used include:
  • Voice interactions with home digital assistants (“Alexa, pay my bill”)  
  • Oral authorization of a bill payment via the Internet that is not a telephone call (Facetime, Skype, etc.)  
  • A consumer provides a Standing Authorization (see proposal #1) on a telephone call, and initiates subsequent payments online

• Currently, the authorization rules do not provide for oral authorization of an ACH payment outside of telephone call
  • ACH Originators wanting to make use of voice authorizations face ambiguous rules for their business scenarios with no clear guidance
Proposal #2 - Oral Authorization – Other Aspects

- Any oral authorization obtained regardless of the channel would need to meet the requirements of an Oral Authorization
- An Oral Authorization obtained over the Internet that is not a telephone call also would need to meet the risk and security requirements that currently apply to WEB entries, and would use the WEB SEC Code
- A Standing Authorization (see Proposal #1) could be obtained orally
  - Or, Subsequent Entries initiated under a Standing Authorization could be initiated through voice commands, instructions, or affirmations
Proposal #2 - Oral Authorization – Expected Benefits

- This proposal would expand the use of oral authorizations for consumer ACH payments, without changing how existing TEL transactions are currently used and authorized.
- It would also accommodate new technologies and channels for conducting commerce and initiating payments that make use of voice commands and interactions.
- The proposal clarifies the use of SEC Codes and risk management requirements related to oral authorizations.
Proposal #2 - Oral Authorization – Anticipated Impacts

• ODFIs and Originators may choose to make use of the expanded applicability of Oral Authorizations, but will not be required to
• Originators that would like to make use of oral authorizations would need meet all requirements for oral authorizations
  • May result in the storage and provision of larger numbers of oral authorizations
• RDFIs should have no impacts to their receipt and posting of Entries
• Some volume of existing TEL entries may migrate to WEB
  • Potential impact on the application of risk management practices specific to SEC codes
  • Potential impact on the tracking of SEC Code volume, returns, and return rates
Proposal #2 - Oral Authorization – Request for Comment

Nacha requests comment on all aspects of this proposal, including:

• As an ODFI or Originator, does your organization use oral authorizations today?
  • If yes, do you obtain any via methods or channels other than a telephone call?
• Would this proposed change lower a barrier to using ACH payments?
• As an Originator, would you use/rely on this change?
  • If so, how?
• Would the proposal improve quality in the ACH Network? Would it introduce any additional risk?
• As an RDFI, is it important to know if an entry was part of an Oral Authorization? Would there be an impact if some volume of TEL entries migrated to WEB?
• Is the storage of a recording of an oral authorization an excessive burden on Originators?
  • If yes, should the timeframe for retaining a recording be reduced?
Proposal #3 - Other Authorization Proposals

In conjunction with the other authorization proposals in this Request for Comment (Standing Authorizations and Oral Authorizations), other modifications and re-organizations of the general authorization rules are being proposed for purposes of clarity, flexibility and consistency

• Clarity
  • Re-organize the general authorization rules to better incorporate Standing Authorizations, Oral Authorizations, and other changes described below
  • Define “Recurring Entry” to complement the existing definition of Single Entry and the proposed new definition of Subsequent Entry (in Proposal #1), and align with Regulation E

• Flexibility
  • Explicitly state that authorization of an ACH payment can be by any method allowed by law/regulation
  • Only consumer debit authorizations require a writing that is signed or similarly authenticated

• Consistency
  • Apply the standards of “readily identifiable” and “clear and readily understandable terms” to all authorizations
  • For all consumer debit authorizations, apply the minimum data element standards that are currently stated only in the TEL rules (i.e., what should be in a consumer authorization)
Proposal #3 - Other Authorization Proposals - Purpose

• The purpose of this proposal is to improve the overall authorization experience, generally through better presentation and therefore understanding of the requirements, and specifically through several additional changes to address gaps

• In particular, many Originators have asked Nacha and others over time about the specific elements that should be included into a “good authorization” for a consumer debit; this proposal addresses that question by applying a minimum data element standard to all consumer authorizations
Proposal #3 – Other Authorization Proposals – Intended Benefits

• Overall, this proposal is intended to improve the clarity and consistency of authorization requirements and methods, while providing some additional flexibility for authorizations for ACH payments other than consumer debits
• Better clarity and consistency ultimately should lead to easier and better understanding of the Rules
• Less ambiguity and better understanding of the authorization rules should improve the quality of authorizations
Proposal #3 - Other Authorization Proposals – Anticipated Impacts

• Some parts of the proposal should not materially affect operations (e.g., language and section re-organization)
• ODFIs and Originators may need to review authorizations regarding the standards of “readily identifiable” and “clear and readily understandable terms”
• ODFIs and Originators may need to review consumer debit authorization language regarding the minimum data elements
• RDFIs should have no impacts to their receipt and posting of Entries
Proposal #3 - Other Authorization Proposals – Request for Comment

Nacha requests comment on all aspects of this proposal, including:

• Will the re-organization of the authorization rules promote better understanding of the rules?

• Will the broader application of the standards for “readily identifiable” and “clear and readily understandable terms” improve the quality of authorizations?

• Will the consistent application of minimum data elements for consumer authorizations lead to better and more consistent authorizations?
Proposal #4 – Alternative to Proof of Authorization

• This proposal would allow an ODFI to agree to accept the return of an entry as an alternative to providing proof of authorization

  • Example – An RDFI requests proof of authorization for a PPD debit; the ODFI would have the option within 10 banking days to either provide proof or agree to accept a return. If the ODFI chooses to accept the return, the RDFI would have 10 banking days to make that return

• In situations in which the ODFI has accepted, or agreed to accept, a return in lieu of providing proof of authorization, but the RDFI still needs such proof, the RDFI would still retain the ability to obtain it from the ODFI

  • Example – After an ODFI and RDFI agree on the return of a debit, the RDFI needs to obtain the proof of authorization as part of litigation
Proposal #4 – Alternative to Proof of Authorization - Purpose

• Some ACH Originators report that a “pain point” occurs when they provide proofs of authorization at the request of RDFIs, but then debits are still regularly returned as unauthorized.
• Some Originators would prefer to agree to accept the return of the debit rather than expend the time and resources necessary to provide proof of authorization.
• The proposal would alleviate the burden of providing proof of authorization in every instance in which it is requested.
Proposal #4 – Alternative to Proof of Authorization – Intended Benefits

• This proposal is intended to reduce an administrative burden on ODFIs and their Originators for providing proof of authorization in every instance in which it is requested by an RDFI
• By allowing an alternative, the proposal is intended to help reduce the costs and time needed to resolve some exceptions in which proof of authorization is requested
• The proposal provides some additional flexibility to parties in the ACH Network on how to handle these exception cases
Proposal #4 – Alternative to Proof of Authorization – Potential Impacts

• ODFIs and their Originators that want to take advantage of this alternative may have to modify business processes
• RDFIs may receive different responses to their requests for proof of authorization
Proposal #4 – Alternative to Proof of Authorization – Request for Comment

Nacha requests comment on all aspects of this proposal, including:

• As an ODFI, does your organization ever agree already to accept a return when you get a request to provide a proof of authorization?
  • If yes, how frequently does this occur?
  • If no, with this proposed change, would you consider agreeing to accept these returns?
• As an ODFI or Originator, does this proposal help address an administrative burden?
• As an RDFI, when you request a proof of authorization, does the ODFI offer or agree to accept a return?
  • If yes, is this in lieu of providing the proof of authorization?
• As an RDFI, are there any situations in which you would still request a proof of authorization after an ODFI had agreed to accept a return?
Proposal #5 – Written Statement of Unauthorized Debit via Electronic or Oral Methods

• This proposal clarifies and makes explicit that an RDFI may obtain a consumer’s Written Statement of Unauthorized Debit (WSUD) electronically or orally
  • The same forms permissible for obtaining a consumer debit authorization are permissible for obtaining a consumer’s statement of unauthorized debit
  • Although these forms are not prohibited by the current Rules, there is confusion in the marketplace today; an explicit reference that they are permissible should increase the industry’s consideration of them
• An additional clarification would be made that a consumer is permitted to sign a WSUD with an Electronic Signature
Proposal #5 – Written Statement of Unauthorized Debit via Electronic or Oral Methods - Purpose

- Under the Rules, an RDFI is responsible for obtaining a consumer’s Written Statement of Unauthorized Debit (WSUD) prior to returning a debit for an unauthorized reason
- The use of paper forms, wet signatures, and branch visits/mail/fax to obtain the WSUD takes time and can be a poor customer experience
- The current Rules do not explicit address electronically or orally provided WSUDs
  - Rather, the Rules explicitly allow electronic records and electronic signatures generally
  - There is confusion in the marketplace, though, about the electronic/oral acceptance of WSUDs
- Direct and explicit language that electronically or orally provided WSUDs are permissible should encourage more RDFIs to allow these options, providing a better experience to some customers and reducing the collection timeframe
Proposal #5 – Written Statement of Unauthorized Debit via Electronic or Oral Methods – Expected Benefits

• This proposal is intended to address an administrative burden on RDFIs and their consumers Receivers
  • Currently, anecdotal evidence suggests that the significant majority of WSUD are still obtained by paper/wet signature
• The options to accept electronically and orally provided WSUDs increases flexibility for RDFIs and can reduce administrative burdens
• These options and increased flexibility should reduce exception costs and resolution time
• Increased adoption of electronically and orally provided WSUDs should improve consumers’ experiences in interacting with their financial institutions
Proposal #5 – Written Statement of Unauthorized Debit via Electronic or Oral Methods – Anticipated Impacts

- RDFIs that want to take advantage of accepting WSUDs by electronic and oral forms would need to incorporate new procedures and technology
- RDFIs taking advantage of accepting WSUDs by electronic and oral forms need to be able to meet the requirement to provide a copy upon request
- ODFIs who request copies of WSUDs might receive these documents in various formats
Proposal #5 – Written Statement of Unauthorized Debit via Electronic or Oral Methods – Request for Comment

Nacha requests comment on all aspects of this proposal, including:
• As an RDFI, do you already accept WSUDs electronically?
  • If yes, what percentage or volume of your WSUDs are electronic?
  • If no, why not? Would you do so under this proposal?
• As an RDFI, do you already accept WSUDs verbally (e.g., on a phone call)?
  • If yes, what percentage or volume of your WSUDs are verbal?
  • If no, why not? Would you do so under this proposal?
• Does this proposal help address an administrative burden?
Proposed Effective Dates

- This Request for Comment proposes that these five areas of changes to the Rules would become effective on July 1, 2021
- Most of the proposals would be optional on the part of the organizations wanting to take advantage of them
  - The use of Standing Authorizations and Oral Authorizations would be optional for ODFIs and Originators to adopt
  - A decision to accept a return in lieu of providing proof of authorization would be optional for ODFIs and their Originators
  - The acceptance of electronically or orally provided WSUDs would be optional for RDFIs
- The proposals are anticipated to have little to no impact to RDFIs on the receipt and posting of entries
- Do you agree with the proposed effective date? Would this give sufficient time for necessary industry education?
- Should any specific proposal have a separate effective date, either earlier or later?
Request for Information
Authorization Dispute Resolution

Issue date: February 18, 2020
Responses due: April 3, 2020
Request for Information – Authorization Dispute Resolution for ACH Originators - Purpose

• Currently, the Nacha Rules do not provide any recourse or appeal for ACH Originators that receive the return of a consumer debit as unauthorized, including in cases in which the Originator has provided, or could provide, proof of a valid authorization; any such recourse must be pursued outside the ACH Network
• Some ACH Originators report that this is a pain point for using the ACH Network
• Conceptually, the Nacha Rules could allow an Originator the opportunity to refute the basis of a return of a consumer debit as unauthorized, perhaps by demonstrating to an arbiter that proper and valid authorization was obtained prior to initiating the debit
• While no specific Rule change is being proposed yet related to such dispute resolution, industry information and feedback is requested to gauge interest in further exploring this topic
Request for Information - Authorization Dispute Resolution for ACH Originators – Potential Benefits

• An authorization dispute resolution mechanism could ease a specific burden on ODFIs/Originators in cases in which the ODFI/Originator has provided, or could provide, proof that a debit was properly authorized, but nevertheless was returned as unauthorized
• This ability could address return scenarios that some Originators think are inherently unfair – i.e., repudiation of an authorized payment
• Over time, such a change could reduce the volume of unauthorized debit returns as parties adapt to a different framework or model for authorization disputes
Request for Information - Authorization Dispute Resolution for ACH Originators – Potential Impacts

• There would be costs, perhaps substantial costs, to setting up and operating a system for authorization dispute resolution
• The potential volume of disputed returns could be high if the capability is broadly applied to any unauthorized debit return, and/or there is a low threshold to making a claim
  • A more limited application (e.g., only available for debits above $500) could limit the potential volume of cases
  • An initial hurdle to making a claim, such as a filing fee, could reduce the filing of frivolous claims
• An appeal mechanism for ACH Originators could give a perception that the ACH Network is less consumer friendly; however, this potential impact should be balanced against the responsibility consumers have to review their statements on a timely basis
Request for Information - Authorization Dispute Resolution for ACH Originators

Industry Questions for the RFI

• What is the scope of this issue? How frequently do the scenarios occur?
• Do you think the Rules should allow ODFIs/Originators to appeal in these scenarios?
• If yes, should an ability to appeal apply broadly or narrowly?
  • Broadly - potentially to any consumer debit returned as unauthorized
  • Narrowly - only to a limited subset of returns. Limits could include:
    • Dollar threshold - only for debits above a defined amount, such as $500 or other level
    • Late returns - could apply only to late returns after 60 days (i.e., for timely returns, there might be no rule change)
    • Only to recurring debits
• Who should decide whether a proof of authorization is valid? Possibilities include:
  • The RDFI
  • ACH Rules Enforcement Panel
  • Arbitration Panel
  • Nacha staff
  • Others - Payment Associations staff; outside attorneys; AAPs, etc.
• Should there be a filing fee or other hurdle to make a claim?
  • The intent would be to discourage frivolous claims
Request for Information - Authorization Dispute Resolution for ACH Originators

Industry Questions for the RFI (continued)

• What should happen if a claim is decided in favor of the ODFI/Originator?
  • E.g., ODFI given permission to dishonor the return

• What should happen if a claim is decided in favor of the RDFI?
  • No dishonored return permitted
  • Should the ODFI/Originator be penalized?

• What should happen if it is not clear or conclusive whether an authorization is valid?
  • There should be “clear and convincing evidence to overturn the call” that a debit was unauthorized – i.e.,
    the burden of proof would be on the ODFI/Originator
  • If there is no clear or conclusive evidence, then the claim would be decided in favor of the RDFI and its
    customer
Request for Information – Authorization Dispute Resolution for ACH Originators

Industry Questions for the RFI (continued)
• Pros vs. cons –
  • What is your perspective on the weighing of the potential benefits vs. the potential costs of an appeal mechanism?
  • What is your perspective on the potential benefit to ACH Originators vs. a perception of the ACH Network being less consumer-friendly?