

Risks of Early Funds Availability

Issue date: May 21, 2021

Close date: July 16, 2021

[Request For Information](#)

Risks of Early Funds Availability Request for Information

Nacha is seeking industry comment and feedback (Request for Information) on whether a Rules proposal should be developed to adjust the allocation of risk when RDFIs make funds from ACH credits available early, before the settlement date of the ACH credit.

- *Should the Nacha Rules support the ability or provide an opportunity for an ODFI to recover funds in limited circumstances when an RDFI has made funds available prior to the settlement date?*

A Request for Information is not a proposal to amend the Nacha Rules. In this case, the purposes of the RFI are to raise awareness of the issue and its risks, and to start industry thinking and dialogue on whether a Rules proposal should be considered or pursued.

Nacha requests that industry stakeholders provide comments and perspectives on the topic, its scope, and the potential benefits and impacts of various options.

Comments may be provided through the industry questionnaire or by comment letter. Responses are requested by July 16, 2021.

Risks of Early Funds Availability

Current Rules and Risk Environment

Currently, the Nacha Rules provide that Originators and ODFIs have no right to recall, require a return, or to stop the payment or posting, once an ACH credit entry has been sent to an ACH Operator

The Rules, however, give an Originator the ability to specify the date on which it intends settlement to occur – the Effective Entry Date

RDFIs have deadlines under the Rules to make funds from ACH credits available to Receivers

- While these deadlines are closely tied to the settlement date and time, they occur after settlement
- The existing Rules do not prohibit an RDFI from making funds available earlier than a given deadline

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Current Rules and Risk Environment

Anecdotally, some RDFIs make funds from ACH credits available prior to the settlement date

- By definition, this is earlier than the date intended by the Originator
- When an RDFI makes funds available early, it is advancing its own funds to its accountholders, and then recovers the amounts at settlement

Historically, some RDFIs – especially smaller institutions – have done this due to the lack of the capability to internally warehouse (i.e., store) ACH credits until the settlement date

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Current Rules and Risk Environment – Benefits for Receivers

More recently, other RDFIs have implemented early availability as a benefit for their consumer and business account holders (the Receivers)

- For example, an employee's payday is Friday, but the RDFI makes funds available to the employee on Thursday

Other examples include

- A small business receives early access to funds for an invoice payment
- A beneficiary receives access to Social Security benefits before the official payment date

Some RDFIs likely view this practice as a benefit for their account holders that has little or no risk of the ACH credit not being settled

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Current Rules and Risk Environment

While providing access to funds prior to settlement is a benefit for Receivers, it also can create or increase several risks:

- The risk of a loss by the ODFI (or its Originator) when an ACH credit was initiated erroneously, or fraudulently, and less time is available to attempt to recover the funds
- The risk of a loss by the RDFI in the event that the scheduled settlement does not occur
 - The RDFI does not receive settlement for the ACH credit, and cannot recover funds from the account holder

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Scenarios at Issue

In situations when an ACH credit entry has been originated in error or due to fraud, an ODFI might attempt to recover funds through a reversal (when permissible), or by contacting the RDFI and requesting the return of funds

Even if the ODFI's recovery is attempted prior to settlement, the RDFI might return a reversal for insufficient funds, or tell the ODFI that funds are no longer available if they have been made available early to the Receiver

- While an ODFI can dishonor the return of a reversal in limited circumstances (R62), ultimately the RDFI can contest the dishonor (R77) when funds are not recoverable from the Receiver

In these scenarios, the ODFI or its Originator could suffer a loss even though it attempted to recover funds prior to the settlement date

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Payroll Scenario Example

An employer originates a file of payroll Direct Deposits on Wednesday, with an Effective Entry Date for Friday, its scheduled payday

Due to an internal error, one of the Direct Deposits is erroneous, a situation for which a reversal is permitted

On Thursday, the employer originates a reversal, which also has an Effective Entry Date for Friday

The RDFI returns the reversal for insufficient funds, even though it was scheduled to settle at the same time as the original credit

- The RDFI had made funds from the original ACH credit available on Thursday, and the funds were withdrawn

The employer might have avoided a loss had the RDFI made funds available as intended by the company

Additionally, varying availability practices by RDFIs can result in employees of the same organization getting access to their pay at different times. An employer might prefer that its employees have a uniform experience on payday.

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Vendor Payment Scenario Example

A company falls victim to a vendor impersonation scam, and sends an ACH credit to a fraudster's account instead of the vendor's actual account

The company contacts its bank, the ODFI, for help. The ODFI contacts the RDFI, asking for the return of the funds.

The RDFI informs the ODFI that the funds have already been transferred out of the account, even though settlement is scheduled for the following day

The ODFI or the company might have avoided a loss if the RDFI had made funds available on the settlement date of the original ACH credit

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Other Relevant Factors

These factors also might relate to an RDFI's decision to make funds availability early

US Treasury Payments: The US Treasury originates a large volume of ACH credits that have extended settlement periods (3-4 banking days) for Social Security and other benefits, tax refunds, and more recently, Economic Impact Payments, potentially providing RDFIs with additional incentive to make funds available early. RDFIs might view these ACH credits as having little or no risk because they are backed by the US government.

Settlement Risk: More generally, settlement risk in the ACH Network (as well as in other systems) has lessened over time, as bank failures have declined, and as regulators have implemented practices that address settlement risk when resolving a failure. RDFIs might view settlement risk for ACH credits as negligible.

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Should the Rules support the ability or provide an opportunity for an ODFI to recover funds in limited scenarios when an RDFI has made funds available prior to settlement?

Potential Approaches

Potential approaches could include a spectrum from “do nothing” to “prohibit early availability.” Other potential approaches to reallocating risk, and/or providing a mechanism for recovery, could include:

- Prohibiting an RDFI from returning a reversal for insufficient funds (R01 or R09) if both the original ACH credit and the reversal are received before the settlement date
- Making the RDFI liable to the ODFI for the amount of an ACH credit, if it made funds available prior to settlement, and the ODFI shows it could have corrected an error or recovered the amount of the credit

Under risk reallocation, an RDFI would not be prohibited from making funds available early; but it could introduce a risk management component into a decision to make funds available early

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Potential Benefits of Risk Reallocation

- Address a specific pain point for ACH Originators, and help keep ACH credits as an attractive payment option (e.g., a company has better success at correcting payroll errors)
- Provide a way for an Originator/ODFI to recover funds from an error or fraud prior to settlement
- Certain approaches might better balance risk between ODFI and RDFI

Potential Impacts of Risk Reallocation

- Solutions could be difficult to implement or administer (i.e., the solution is worse than problem)
- Certain approaches could be viewed as anti-consumer if some RDFIs change early availability practices
- Certain approaches might shift risk away from ODFI and Originators who were responsible for the underlying error

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Information Requested

The following information is requested from industry stakeholders:

- What are the benefits of early availability?
- Do RDFIs consider risk when making funds available early?
- How frequently do the scenarios occur? Are there other similar scenarios?
- Do the existing Rules fairly balance risks of early funds availability between origination and receipt as it exists prior to the settlement date?
- Should the Rules support the ability or provide an opportunity for an ODFI to recover funds in limited scenarios when an RDFI has made funds available prior to settlement?
- Do any of the potential approaches fairly reallocate risks between origination and receipt?
- Would any of the potential approaches be effective in enabling ODFIs to recover funds?
- Are there other potential approaches that should be considered?