

## 2021 and 2022 ACH Rule Changes

The National Automated Clearing House Association has published rule changes for 2021 and 2022 which we have summarized below for your convenience. This summary details the impacts of these rule changes on the most common types of corporate origination services but is not intended to replace the detailed analysis needed to determine the impact these changes have on your organization.

To access the NACHA Operating Rules or a full list of upcoming rule changes, visit [www.nacha.org](http://www.nacha.org).

### 1. Supplementing Fraud Detection Standards for WEB Debits

Effective March 19, 2021

#### **Summary**

The existing NACHA rule requiring Originators of WEB debit entries to use a “commercially reasonable fraudulent transaction detection system” has been supplemented to make it explicit that a “fraudulent transaction detection system” must include “account validation” for the first use of an account number or changes to an account number. Originators of these entries will need to determine that the account to be used is a legitimate, open account.

Examples of the methods to validate an account may include but are not limited to the use of: Prenotification Entry, ACH micro-transaction verification, commercially available validation services provided by either an ODFI or a third-party, and account validation capabilities or services enabled by APIs. A third-party that provides scoring information on the account status might be determined by some Originators to be a commercially reasonable option, or an account with a proven history of prior successful payments.

#### **Originator and Third-Party Sender Impact**

Originators and Third-Party Senders who currently do not perform fraud detection for WEB debits, or whose fraud detection does not include account validation, will need to implement a solution to comply which could increase the cost of originating WEB debits.

#### **Reference Information**

This rule modifies the language within the following areas of the NACHA Operating Rules:

- Article Two, Subsection 2.5.17.4 *Additional Warranties for Debit WEB Entries*

### 2. Expanding Same Day ACH

Effective March 19, 2021

**Available for East West Bank Customers December 2021**

#### **Summary**

This new rule expands access to Same Day ACH by allowing Same Day ACH transactions to be submitted to the ACH Network for an additional hour every business day. The rule intends to balance the desire to expand Same Day ACH through extended hours with the need to minimize impacts on financial institutions’ end-of-day operations and the re-opening of the next banking day.

### ***Originator and Third-Party Sender Impact***

Originators and Third-Party Senders interested in originating same-day entries should contact your Relationship Manager or your GTS Sales Consultant.

## **3. Differentiating Unauthorized Return Reasons (Phase 2)**

Effective April 1, 2021

### ***Summary***

Phase 2 of this rule implements the addition of the R11 return reason code to the Unauthorized Entry Fee and Unauthorized Entry Return Rate rules.

### ***Details***

Return reason code R11 is defined as “Customer Advises Entry Not in Accordance with the Terms of the Authorization.” Effective April 1, 2020, R11 was implemented to allow the RDFI to return an entry when the originator and receiver have a relationship, and an authorization exists, but one of the following errors occurred:

- The debit entry is for an incorrect amount
- The debit entry was debited earlier than authorized
- The debit entry is part of an incomplete transaction
- The debit entry was improperly reinitiated
- For ARC, BOC, or POP entries:
  - The source document was ineligible
  - Notice was not provided to the receiver
  - The amount of the entry was not accurately obtained from the source

Originators receiving an R11-coded return can correct the underlying error and submit a new entry within 60 days using the pre-existing authorization from the receiver.

Both R10 and R11 returns are considered unauthorized under the ACH Rules, meaning:

- Both return types are subject to the same error resolution procedures under Regulation E as unauthorized EFTs
- The RDFI’s procedures to handle the receiver claim and obtain a signed Written Statement of Unauthorized Debit (WSUD) remain the same for both types of returns
- The return timeframe for both returns is 60 days
- Both returns will be included within NACHA’s definition of Unauthorized Entry Return Rate
- Both returns will be covered by the NACHA’s existing Unauthorized Entry Fee
- The use of both types of returns does not include disputes about goods and services

### ***Originator and Third-Party Sender Impact***

Originators of consumer debits will have access to the precise reasons for the return, distinguishing a Receiver’s claim of error from a lack of authorization. This allows an Originator to customize their response for both types of returns. For instance, Originators may fix and resend an entry associated with an R11-coded return while obtaining a new authorization or closing the account of the receiver associated with an R10-coded return.

By contractual agreement, East West Bank may pass on Unauthorized Entry Fees to the Originator and/or Third-Party Sender. These will begin to include any R11 return entries received.

#### ***Phased Implementation***

April 1, 2021 (Designated as Phase 2) - The re-purposed R11-coded returns are covered by the Unauthorized Entry Fee and returns will be debited/credited to ODFIs/RDFIs by their ACH Operator.

#### ***Reference Information***

The NACHA Operating Rules updated to support these unauthorized return reasons are as follows:

- Article One, Subsection 1.11.1 *General Rule on Unauthorized Entry Fee*
- Section 8.111 definition of *Unauthorized Entry Fee*
- Section 8.112 definition of *Unauthorized Entry Return Rate*

### **4. Supplementing Data Security Requirements (Phase 1)**

Effective June 30, 2021 ACH volume greater than 6 million

#### ***Summary***

This rule supplements the existing account information security requirements for large-volume Originators and Third-Party Processors and Senders.

#### ***Details***

The rule requires non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders with annual ACH volume of **6 million entries or greater**, to protect deposit account information by “rendering it unreadable when stored electronically.” A common solution will be to encrypt this information.

#### ***Originator and Third-Party Sender Impact***

Any non-financial institution Originator whose total ACH origination volume exceeds 6 million entries in calendar year 2019 and any Third-Party Sender or Third-Party Service Provider whose aggregate volume exceeds this amount will be required to comply with this rule no later than June 30, 2021.

#### ***Reference Information***

This rule modifies the language within the following areas of the NACHA Operating Rules:

- Article One, Section 1.6 *Security Requirements*

### **5. Limitation of Warranty Claims**

Effective June 30, 2021

#### ***Summary***

This rule limits the length of time that an RDFI has for making a claim against an ODFI’s authorization warranty.

### ***Details***

- For entries to non-consumer accounts, the time limit will be one year from the settlement date of the entry.
- For entries to consumer accounts, the limitation covers two time periods. The first 95 calendar days from the settlement date of the first unauthorized entry or, if outside the first 95 days, two years from the settlement date of the entry. This allows for “extenuating circumstances” in which a consumer is delayed from reporting an error to their financial institution.

### ***Originator and Third-Party Sender Impact***

This rule is intended to establish a more equitable allocation of liability between the Originator and Receiver. It establishes that Receivers have a responsibility to review statements and report unauthorized activity in a timely manner which helps to lessen the impact of “friendly fraud” on Originators.

## **6. Reversals and Enforcement**

Enforcement – Effective January 2, 2021

Reversals – Effective June 30, 2021

### ***Summary***

Enforcement: Defines and enforces “egregious violations” of the ACH Rules.

Reversals: Expands the permissible reasons for a reversal to include “wrong date” error and establishes further formatting requirements beyond the use of REVERSAL in the Company Entry Description Field.

### ***Details***

Enforcement: Allows the ACH Rules Enforcement Panel to determine the violation as egregious and classify it as a Class 2 or 3 Rules Violation. Class 3 violations can be fined up to \$500,000 per occurrence and can include a directive to the ODFI to suspend the Originator or Third-Party Sender.

### ***Originator and Third-Party Sender Impact***

Clearer and more consistent understanding of when Originators should *not* use reversals, particularly when it pertains to a credit file.

This rule also emphasizes the need for compliance and adherence to the proper use of reversals as penalties could result in monetary fines or, in certain egregious circumstances, impact the ability of the Originator to participate in the ACH Network.

Reversals: The “wrong date” error can be used for either the reversal of a debit entry that was for a date earlier than intended by the Originator, or a credit entry that was for a date later than intended by the Originator. The ACH Rules will permit an RDFI to return an improper reversal entry using either R11 or R17.

## 7. Meaningful Moderation

Effective September 17, 2021

### **Summary**

Improve and simplify the ACH Rules by implementing the following:

- Facilitate the adoption of new technologies and channels for authorization and initiation
- Reduce barriers to using ACH
- Provide clarity and consistency around certain ACH authorization processes
- Reduce some administrative burdens related to ACH authorizations

### **Details**

- Defines “Standing Authorization” as an advance authorization by a consumer of future debits at various intervals; adds the ability for future debits to be initiated through some further action by the consumer and requires no further action or authorization on the part of the Originator or Third-Party Sender.
- Authorization may be obtained in writing or orally (Oral Authorizations). Individual payments initiated based upon the Standing Authorization will be defined as Subsequent Entries and may be initiated in any manner identified in that authorization.

This rule will allow Originator and Third-Party Senders some flexibility in the use of SEC codes for individual Subsequent Entries such as TEL or WEB depending the nature of the authorization regardless of how the Standing Authorization was obtained. While the Originator or Third-Party Sender will not need to meet the authorization requirements of these SEC codes, they will need to adhere to the risk management and security requirements. Reference details on SEC code requirements in Section 8 of the ACH Rules.

Defines and allows an “Oral Authorization” as a valid method for consumer debits distinct from a telephone call. Only TEL has requirements and addresses risks specific to oral authorizations, but there are newer methods of authorization that make use of verbal interactions and voice-related technology.

In conjunction with Standing Authorizations and Oral Authorizations, the rule includes other modifications of general authorization rules. These include, but are not limited to:

- Defining “Recurring Entry” that aligns with Regulation E,
- Providing additional flexibility obtaining authorizations, and
- Applying standards of “readily identifiable” and “clear and readily understandable terms” to all authorizations.

### **Originator and Third-Party Sender Impact**

This rule is intended to improve clarity and consistency with authorization requirements and methods. It enables the authorization and initiation of ACH payments across various business models, provides some flexibility with the use of certain consumer SEC Codes, and provides a clearer understanding of authorization in scenarios that are not addressed in existing rules. It also provides a framework in which Originators and Third-Party Senders can add new payment initiation methods and channels.

Originators and Third-Party Senders have the option of modifying or expanding their current authorizations to accommodate the use of Standing Authorizations, Subsequent Entries, and Oral Authorizations if desired. They may need to familiarize themselves with the risks and requirements of alternate SEC codes.

All Originators should review their current authorizations to ensure they adhere to the “readily identifiable” and “clear and readily understandable terms” provisions.

### ***Reference Information***

This rule modifies the language within the following areas of the NACHA Operating Rules:

- Article Two, Section 2.3, *Authorization and Notice of Entries*
- Article Two, Section 2.5, *Provisions for Specific Types of Entries (TEL and WEB Subsections)*
- Article Eight, definitions
- Appendix Three, ACH Record Form specifications
- Appendix Four, Return Entries

## **2022 ACH Rule Changes**

### **1. Increasing Same Day ACH Dollar Limit**

Effective March 18, 2022

#### ***Summary***

This rule will continue to expand the capabilities of Same Day ACH. Increasing the Same Day ACH dollar limit to \$1 million per payment is expected to improve Same Day ACH use cases and contribute to additional adoption. This rule will apply to all Same Day ACH entries: consumer and business payments, credits, and debits.

#### ***Originator and Third-Party Sender Impact***

A dollar limit increase would result in a larger amount of dollars settling at several times throughout the day. All ACH participants should understand and plan for these dollar flows within their organizations.

### **2. Supplementing Data Security (Phase 2)**

Effective June 30, 2022 ACH volume greater than 2 million

#### ***Summary***

Phase 2 reduces the volume threshold to those who exceed 2 million entries in calendar year 2020, requiring Originators and Third-Party Senders to comply no later than June 30, 2022.

#### ***Details***

The rule requires non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders with annual ACH volume of **2 million entries or greater**, to protect deposit account information by “rendering it unreadable when stored electronically.” A common solution will be to encrypt this information.

### ***Originator and Third-Party Sender Impact***

Any non-financial institution Originator or Sender whose total ACH origination volume exceeds 2 million entries in calendar year 2020 and any Third-Party Sender or Third-Party Service Provider whose aggregate volume exceeds this amount are required to comply with this rule no later than June 30, 2022.

### ***Reference Information***

This rule modifies the language within the following areas of the NACHA Operating Rules:

- Article One, Section 1.6 *Security Requirements*

## **3. Third-Party Sender Roles and Responsibilities**

Effective September 30, 2022

### ***Summary***

The purpose of these rules is to further clarify the roles and responsibilities of Third-Party Senders (TPS) in the ACH Network by addressing the existing practice of Nested Third-Party Sender relationships and making the requirement that a TPS conduct a Risk Assessment.

### ***Details***

This rule will define a Nested Third-Party Sender and will provide for the “chain of agreements” and responsibilities in Nested TPS arrangements. A “Nested Third-Party Sender” will be defined as a Third-Party Sender that has an agreement with another Third-Party Sender to act on behalf of an Originator and does not have a direct agreement with the ODFI. Nested TPSs will be addressed in ACH Origination Agreements.

Risk Assessments are already defined and required in the NACHA Rules for Financial Institutions and, *by extension*, for Third-Party Senders under their obligations to perform and warrant ODFI obligations. The proposed rule will *expressly state* that a Third-Party Sender, Nested or not, is required to conduct a Risk Assessment. A Third-Party Sender must implement, or have implemented, a risk management program based on their Risk Assessment and the obligation to perform a Risk Assessment, as well as the required Rules Compliance audit, cannot be passed onto another party (i.e., each participant will conduct or have conducted its own).

### ***Originator and Third-Party Sender Impact***

To the extent that ODFIs and Third-Party Senders do not already address Nested TPSs in their agreements, they will need to:

- Modify Origination Agreements for future use (i.e., going-forward after the effective date)
- Expand due diligence on TPS customers regarding Nested TPS relationships
  - ODFIs that have TPS with Nested TPS relationships must be able to provide NACHA with such information, upon request

Third-Party Senders that have not previously conducted an ACH Risk Assessment would have to do so. Third-Party Senders that have relied on other TPSs’ Risk Assessments or Rules Compliance Audits would need to conduct their own.

## General Originator Responsibilities

In addition to the new ACH Rules above, all Originators, Third-Party Senders and Third-Party Service Providers are required to comply with the general origination requirements of the ACH Rules including:

- A. Obtaining proper authorization from its receivers. *Subsection 2.3.1 (Originator Must Obtain Authorization from Receiver)*
- B. Retaining the original or copy of each written authorization of a receiver, or a readily and accurately reproducible record evidencing any other form of authorization for at least two years from the termination or revocation of the authorization. *Subsection 2.3.2.5 (Retention and Provision of the Record of Authorization)*
- C. Providing proper and timely notice to receivers for changes to the amount or scheduled date of recurring debits. *Subsection 2.3.2.6 (Notices of Variable Debits to Consumer Accounts)*
- D. The proper way to initiate prenotification entries. *Section 2.6 (Prenotifications)*
- E. The proper way to reverse files or entries. *Section 2.8 (Reversing Files) and Section 2.9 (Reversing Entries)*
- F. Familiarity with the proper actions to take upon receipt of a notification of change entry *Section 2.11 (Notifications of Change)*
- G. Familiarity with the rules pertaining to re-initiation of ACH entries. *Subsection 2.12.4 (Re-initiation of Returned Entries)*

The originator should also be aware of the provisions for the specific types of entries it originates:

- CCD (Corporate Credit or Debit) provisions are included in Subsection 2.5.3
- CTX (Corporate Trade Exchange) provisions are included in Subsection 2.5.5
- PPD (Prearranged Payment and Deposit) provisions are included in Subsection 2.5.12
- WEB (Internet-Initiated/Mobile Entry) provisions are included in Subsection 2.5.17

The ACH Network and Operating Rules continue to evolve to meet the needs of businesses, governments and consumers that use the network to initiate over \$50 trillion in transaction value each year. The ACH Rules can be difficult to understand, but we can assist with questions to help your company better utilize the ACH Network. Feel free to contact our GTS Customer Service 888-761-3967 or email [ewbb@eastwestbank.com](mailto:ewbb@eastwestbank.com). Additional information can be found at National Automated Clearing House Association [www.nacha.org/corporates](http://www.nacha.org/corporates).