



Leading the payments industry through rulemaking, dialogue, advocacy and education

December 3, 2018

Via Electronic Submission

Ann 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-1625

Dear Ms. Misback:

NACHA – The Electronic Payments Association (“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 request for comment regarding potential Fed actions to support interbank settlement of faster payments (the “Request”).

As the Fed considers its role in supporting faster payments, it also should keep focus on its broader role in providing settlement services to enable an efficient payments system composed of a myriad of payment types, including the Automated Clearing House (“ACH”) Network. The ACH Network moves an average of 90 million payments a day – it is a ubiquitous payment system that American consumers and businesses depend upon to pay wages and benefits, and to pay bills and invoices. The private sector continues to invest in improvements to the ACH Network, which the Fed should support by extending settlement operating hours and adding other enhancements. As the Fed improves its settlement services, these improvements should apply to all payment types, so that all Americans can benefit from faster and smarter ACH payments.

I. BACKGROUND: NACHA AND THE ACH NETWORK

NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and remittance information in the United States. The ACH Network serves as a safe, secure, reliable and ubiquitous network for direct consumer, business, and government payments, and annually facilitates billions of payments moving trillions of dollars. 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 11 Regional Payments Associations.

NACHA's rules development process includes input from and participation from all types of organizations, including both business and consumer end-user organizations, as well as the Federal Reserve Board of Governors and the Federal Reserve Banks.

II. COMMENTS ON THE REQUEST

A. Introduction

NACHA appreciates the Fed's efforts to engage the payments industry in a dialogue about potential improvements to the U.S. payment system, particularly as it relates to faster payments. NACHA has been an active participant in that dialogue, including as a member of the Faster Payments Task Force ("FPTF"), the Governance Framework Formation Team ("GFFT"), the Faster Payments Council ("FPC") and the Secure Payments Task Force ("SPTF"). In short, NACHA views the effort to improve the U.S. payments system as a public-private partnership to which NACHA brings valuable insight as the industry organization charged with oversight of the ACH system and its ongoing evolution.

In this role, NACHA has been leading the industry with its efforts to advance the ACH Network. For example, NACHA drove the ultimately successful effort to adopt and implement ubiquitous same-day processing capabilities for the ACH Network. Same Day ACH is representative of the type of improvements that can be made in existing payments capabilities and technology to enhance customer utility and the public interest while concurrently managing systemic risk. NACHA has also been working to encourage the development of directory services and tools, particularly for business-to-business ("B2B") electronic payments, that will improve the utility of payment services like the ACH. NACHA has actively engaged the Fed in both of these initiatives.

In light of this history in working side-by-side with the Fed to identify and implement changes that can have a relatively immediate positive impact on public welfare, NACHA is concerned to see that the Request contemplates that the Fed would introduce new interbank settlement services that would be available only to newly developed instant payment systems that settle one payment at a time.¹ While NACHA supports the exploration of more efficient interbank settlement that is available for longer hours on the current date than that which is currently provided, the Request represents a significant departure from the Fed's history of making its interbank settlement services open and available to all payment systems that want to use it, and the Fed's explicit commitment to make specific improvements to Fed services that the ACH Network utilizes.

In particular, in its January 2015 Strategies for Improving the U.S. Payment System Report (the "2015 SIPS Report"), the Fed committed to improving interbank settlement services based on industry feedback received in response to the Fed's September 2013 "Payment System Improvement-Public Consultation Paper ("Consultation Paper"). In this regard, Strategy 5 from

¹ The Request describes faster payments as payments allowing for real-time or near real-time payments from the perspective of the end users. *See, e.g.*, Request at 4 ["Faster payments allow end users to initiate and receive payments at any time of the day, any day of the year, and to complete those payments in near-real time (from the end user's perspective), such that, within seconds, the recipient has access to final funds that can be used to make other payments.] We refer to these payments as "instant payments" in our comments, to distinguish from other forms of expedited payments, such as same day payments.

the 2015 SIPS Report was not restrictive or exclusive to only certain payment types. Rather, that strategy was broadly described as engaging in efforts to “*enhance the National Settlement Service to make it more attractive as a settlement vehicle for private sector arrangements. An improved service has the potential to empower private-sector innovation around solutions for making payments faster, safer and more efficient.*”² All three phases of Strategy 5 are payment-channel agnostic. These phases included changing the operating hours of the National Settlement Service (“NSS”) and educating the marketplace about the advantages of the Fed’s NSS (Phases 1 and 2), seeking input on potential enhancements to the NSS, such as streamlined onboarding and additional data transmission capacity (Phase 2), and implementing enhancements and exploring technology, infrastructure and operational and resource changes required to support weekend and/or 24x7 operating hours (Phase 3).

We strongly encourage the Fed to renew its commitment to Strategy 5 from the 2015 SIPS Report as described above, including by expanding the hours of the NSS later on the current date by more than the thirty-minute extension already implemented, adopting changes to the Fed’s services to enhance Same Day ACH payments, and providing risk management and directory tools to support the ACH Network.

We also strongly encourage the Fed to renew its commitment to payment-channel agnostic directories that enable electronic payments. Both Strategies 4 and 5 of the 2015 SIPS Report supported electronic payment directories that are payment-channel agnostic. Strategy 4 supported directories to enable electronic payments “that can be made on new or legacy electronic payment platforms.”³ Strategy 5 also supported “interoperable, secure directory tools” that “support legacy and future payments types.”⁴

The ACH Network facilitates billions of payments and provides a safe, secure, efficient and reliable network for consumer, business and government payments. ACH payments are ubiquitous, and the ACH Network is used every day by millions of people, companies and government agencies to make safe and secure payments. The ACH system continues to see robust growth in the volume of transactions, adding more than 1 billion new transactions for four consecutive years. Supporting greater speed and functionality for ACH transactions, one of the most important and commonly used methods of payment, will provide many of the same types of benefits that the Request associates with instant payments. Industry innovators are already providing faster payments, and even instant funds availability, enabled by the ubiquitous ACH Network. The Fed should consider its options to support all types of payments improvement in the U.S., some of which may be achievable sooner than that proposed. A renewed commitment by the Fed to all the strategies it outlined in the 2015 SIPS Report would therefore bring broad and more immediate benefits and improvements to the U.S. payment system, beyond improved support for instant payments.

² 2015 SIPS Report at 21.

³ 2015 SIPS Report at 20.

⁴ 2015 SIPS Report at 22.

B. Industry Needs for Payment Systems Modernization are Not Limited to RTGS

As the Request notes, many jurisdictions outside of the U.S. have developed instant payment systems in response to changing end-user expectations.⁵ However, other jurisdictions have not limited their payment systems modernization efforts to supporting instant payments; at the same time, they have introduced enhancements to their batch payment capabilities. NACHA strongly believes that the Fed should do likewise; it should provide enhanced services in support of the batch network, and should offer enhanced settlement services to any payment channel that would like to take advantage of such services. Batch networks offer an extremely efficient way to clear and settle tens of billions of payments. Investments in improvements to batch services will support greater end-user choice in payment types. In fact, many jurisdictions have adopted “fast batch” settlement as a way to support the industry’s needs for greater efficiency and reduced risk. In July 2013, NACHA shared with the Fed research that we had commissioned showing how other geographies had enhanced central bank settlement services in support of a variety of faster payment options. At that time, NACHA encouraged the Fed to do the same for the U.S.

While instant payments undoubtedly provide real benefits in a number of use cases, NACHA respectfully suggests that the Request overstates the case with regard to certain benefits. For example, we are aware of no basis for the claim that “[f]aster payments eliminate the need to schedule bill or vendor payments well in advance....”⁶ Even if instant payments become ubiquitous, there is no reason to believe that payors will cease to schedule in advance numerous recurring payments (e.g., mortgages, car payments, utility payments, payroll, benefits distributions) and other transactions, particularly when payments scheduled in advance are convenient for consumers and businesses, and are competitively priced.

Furthermore, the definition of the “problem” that the Request seeks to address refers to the benefit of allowing faster payments to avoid late fees.⁷ However, the ability to schedule payments in advance (whether by ACH, Same Day ACH, or credit/debit card) already addresses that problem, and extended NSS operating hours later on the current date would further enhance the ability of Same Day ACH to satisfy this need and allow payors to avoid late fees for payments that are “due today.” We are aware of no indication that instant payments are the only means possible to address the ability to make payments to avoid late fees; nor are we aware of any indication that biller systems would even be able to accommodate such changes in the near future.

On the other hand, by defining the only “problem” to be resolved through payment system modernization as a need for support of instant payments that settle one payment at a time, the Request reaches the foregone conclusion that building a new RTGS is the only appropriate tool to address that problem. In essence, the Request seems to view the articulation of “effectiveness” standards in the FPTF “Faster Payments Effectiveness Criteria” as an evolution and narrowing of the Fed’s earlier commitment to a multi-pronged approach to payment systems improvement contained in the 2015 SIPS Report. As indicated above, however, Strategy 5 from the 2015 SIPS Report very clearly undertook a commitment to enhance NSS and provide directory tools in support of robustly utilized existing payments systems like the ACH.

⁵ See, e.g., Request at 5.

⁶ Request at 4.

⁷ See, e.g., Request at 4.

Strategy 2 provided a parallel track for identifying additional changes that would be effective in promoting faster payments, but that was never intended to be exclusive of the other improvements called out by Strategy 5. Thus, when the FPTF published its “Faster Payments Effectiveness Criteria” as a set of standards for evaluating proposals under Strategy 2, there was never an understanding or intention that Strategy 2 had somehow supplanted Strategy 5.

Indeed, the “Faster Payments Effectiveness Criteria” themselves explicitly acknowledge that there will be tradeoffs among the criteria for different proposed solutions. For example, criteria related to ubiquity and implementation timeline clearly favor the types of improvements as articulated in Strategy 5, since financial institutions would not need to build completely new interfaces to a new RTGS system, and smaller institutions would not need to implement the type of 24x7x365 support necessitated by such a system. By proposing instead to enhance settlement and create liquidity management tools to support only instant payments, the Request departs from a policy of offering settlement services that are payment-channel agnostic, and ignores the countervailing benefits to be gained by improving support of existing payment systems. In fact, supporting alternatives in addition to a new RTGS system could provide the industry with stepping-stones for payments improvement that bring nearer-term positive results.

In this regard, the Request largely ignores the feedback the Fed received in response to the Consultation Paper, as well as the Fed’s own broadly written Strategies 4 and 5 in the 2015 SIPS Report. In particular, the Request does not address the detailed comments and specific requests made by NACHA and others in the industry in response to the Consultation Paper to provide enhancements to existing infrastructure. For example, organizations such as NACHA and WesPay have been asking for changes in settlement services for many years to support ACH. In 2013, NACHA commissioned a scan of ACH and instant payment schemes globally to better understand how different jurisdictions settled fast batch and instant payments. This work was completed in the spring of 2013, and NACHA shared the results with the Fed in July 2013. Soon thereafter, in response to the Consultation Paper, NACHA wrote, “(t)o support a 21st century payment system, the Federal Reserve could expand the opening hours of the National Settlement Service to support daily settlement activity with longer opening hours, ideally on a near 24x7 schedule, even on weekends and holidays.” Yet, to date, the only service improvement implemented by the Fed later on the current date has been 30 minutes of extended NSS operating hours, from 5:00 p.m. to 5:30 p.m. ET.⁸ The Fed has not committed to implementing the industry’s request to extend the NSS operating hours for a longer period of time to support expanded Same Day ACH availability, even though NACHA and others have been in dialogue with the Fed for several years specifically on this point.

Furthermore, the Request notes that the service hours for NSS are 7:30 a.m.-5:30 p.m. ET, and that the Fed has announced that it is prepared to accept requests to re-open NSS “as early as 9:00 p.m. ET the previous calendar day for the next business day.”⁹ The Request goes on to state that “To date, no settlement agent has requested an earlier opening.”¹⁰ However, the most likely reason that no settlement agent has made this request is because re-opening the NSS

⁸ NACHA further notes that in providing this extension, the Fed did not limit access solely to the private-sector ACH Operator in support of Same Day ACH. Rather, the service is available in this extended period to any qualified organization that wants to use it.

⁹ Request at 40 n.53.

¹⁰ *Id.*

on the next banking day's date is not desirable to the industry, which is looking to process and settle transactions for longer hours on the current date. Thus, as of the date of these comments, end users in the Pacific Time Zone cannot settle transactions on the current day after 2:30 p.m. PT. This is a major barrier to extending the transacting day and responding to end-user needs, which the Request does not address at all. We further note that there are some end users of the ACH Network that would like to have access to Same Day ACH even later into the business day than provided for in the enhancements just recently approved.¹¹

The 2015 SIPS Report also states that the Fed will “collaborate with stakeholders to develop and implement a directory to support B2B electronic payments[.]”¹² NACHA has been asking for Fed support for directory services to support ACH B2B payments for many years, but the Request suggests that the Fed has abandoned support for a payment-channel agnostic B2B directory, and narrowed its focus to instant payments only.

C. The Fed Should Not Favor One Solution Over Others

By focusing on instant payments and a proposed RTGS service, rather than payment-channel agnostic improvements that would support existing systems and expedited payments by other means, such as more frequent batch settlement, the Request is favoring one solution and in effect “picking a winner,” rather than providing broader industry support. NACHA respectfully suggests that this is inconsistent 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”¹³

Moreover, while the Request is grounded on a fundamental, underlying bias that “non-faster payment systems” are lacking because they are not available on a 24x7x365 basis, limitations on the availability of critical Fed services have been a significant impediment to allowing such payment systems to be available for longer hours and on all calendar days. For example, ACH Operators process ACH files 23.25 hours per banking day (from 3:00 a.m. to 2:15 a.m. ET on the next day), but can only conduct interbank settlement when other Fed systems and the NSS are open. If the Fed made other systems and the NSS available for longer periods of time, the ACH Operators could conduct interbank settlement during a greater portion of each banking day. Similarly, although the private-sector ACH Operator conducts some ACH file processing on weekends, it cannot conduct interbank settlement until the Fed opens the NSS on the next banking day following a weekend and/or holiday. Again, if the Fed opened the NSS during weekend hours for the current day’s date, interbank settlement in support of ACH file processing could be available during those weekend hours.

Nonetheless, NACHA is not suggesting that the Fed should abandon the concept of developing an RTGS, or that a properly supported ACH system would satisfy all of the perceived needs identified in the Request. Rather, NACHA suggests that it is incumbent on the Fed to provide support on a payment-channel agnostic basis (as its 2015 SIPS Report indicated it would). More specifically, NACHA respectfully urges the Fed to provide support and

¹¹ See Same Day ACH Will Be Enhanced to Meet ACH End-User Needs (<https://www.nacha.org/news/same-day-ach-will-be-enhanced-meet-ach-end-user-needs>)

¹² 2015 SIPS Report at 50.

¹³ Request at 6-7.

improvements that will enable the ACH system to enhance the services, such as a Same Day ACH, on which the industry already relies, and that would meet many of the goals and criteria described in the Request. Improvements such as these, if supported by the Fed, could broadly enable a more efficient payment system and help all participants move towards the ability to support a 24x7x365 environment.

D. The Proposed RTGS

With regard to the proposed RTGS described in the Request, NACHA does not have a specific opinion on whether the Fed should build such a system. NACHA suggests, however, that the complexity of implementing the RTGS should not be underestimated. In order to participate in instant payments utilizing the RTGS, back office operations of financial institutions will need to operate on a 24x7x365 basis to support 24x7x365 settlement. This would be a sea-change for many banks and credit unions, some of which are unprepared for such changes. In NACHA's experience, some banks and credit unions were challenged by having to support Same Day ACH transactions, and are likely to face many more challenges to provide 24-hour settlement¹⁴ and support a 7-day accounting regime.¹⁵

Similarly, many corporations will be challenged to meet the demands of instant payments supported by the RTGS. For example, many companies do not have the capability to post instant payments in real-time, and in many cases they have no plan to implement such capabilities. Instant bill payment will become a viable product when billers can post such bill payments in real-time so that the payor can verify immediately that his or her account has been credited for the payment. Again, NACHA does not discount such functionality as a worthy long-term goal, but the Fed should not lose sight of other, more immediate improvements in the interim.

Interim improvements, in addition to the longer-term change as proposed by the Fed, would allow the industry to develop increased capabilities over time, thereby supporting more rapid innovation and broad end-user benefits.

E. The Proposed Liquidity Management Tool

With regard to the proposed liquidity management tool, NACHA is supportive of the development of such a tool, but respectfully requests that the tool be designed to support enhanced settlement for any payment system, including the ACH. As the Request notes, a challenge for deferred net settlement systems is the ability to manage interbank credit risk arising out of the accumulation of obligations between settlement windows. The proposed creation of a liquidity management tool could equally assist the ACH system in managing any such risks, and any new tool should be available to all systems that could benefit from it, not just RTGS, as proposed.

As the Fed assesses different methods to allow the industry to better manage liquidity, NACHA recommends that the Fed either expand the operating hours of NSS (for current day transactions) or create a tool that would allow the private-sector ACH Operator to settle ACH transactions later in the day and on weekends. These steps should be further enhanced by

¹⁴ See Request at 43, Question 3.b.

¹⁵ See Request at 44, Question 3.d.

expanding the FedWire Funds Service operating hours for the current date on non-banking days (such as weekends and holidays) to support the expanded NSS hours, which will help financial institutions to manage their liquidity for ACH transactions and for instant payments schemes. By taking these steps, the Fed would demonstrate its renewed commitment to supporting payment-channel agnostic improvements that will provide benefits to the industry and to a broader range of payors and companies.

III. CONCLUSION

In conclusion, NACHA supports the Fed's continued willingness to engage in discussions with industry representatives on improvements in the U.S. payment system, including support for faster payments. We believe that, to the extent the Request reflects a Fed choice to support only instant payments, and not other improvements that are payment-channel agnostic and that the Fed itself previously has recognized are necessary, the Request is too narrowly focused.

The Fed is signaling the advent of a 24x7x365 banking system. This commitment to the future of banking should include more than a focus on real-time systems. Many other geographies embarking on this journey also committed to expanding the capabilities of their batch networks – knowing that end users demand both single entry and efficient batch payments. By limiting this proposal to building those services that support only instant payments, the Fed is not fully serving the broad public interest.

NACHA believes that through other improvements, whether made alone or in tandem with the development of the new RTGS and liquidity management tools, the Fed can enable existing payment systems to provide greater benefits to the public, including expanded hours of operation and faster availability of funds.

To that end, NACHA reiterates the following requests for improved support of the ACH Network by the Fed:¹⁶

- Expanded NSS operating hours later on the current date, to include additional operating hours during business days and non-business days;
- Support for the development of a directory to support electronic payments, agnostic of payment type;
- Permit the use of settlement sub-accounts and/or other liquidity management tools for any payment system that desires to use them;
- Provide tools for the private-sector ACH Operator to settle ACH transactions when other Fed services are closed, potentially including access to the Fed accounting system so as to create a competitively level playing field with the Fed's ACH Operator.

¹⁶ NACHA has made similar, ongoing requests in response to the Consultation Paper and through its participation in the FPTF, GFFT and SPTF and other industry forums.

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NACHA appreciates the opportunity to provide comments in response to the Request. 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,

A handwritten signature in cursive script that reads "Jane Larimer".

Jane Larimer
Chief Operating Officer & General Counsel

cc: David E. Teitelbaum, Esq.