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January 21, 2016

VIA EMAIL: regs.comments@federalreserve.gov

Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: FR 3066a, b, c, and d; OMB control number: 7100-0351

Dear Secretary Frierson:

NACHA – The Electronic Payments Association[1] respectfully submits this response to the Request for Comment regarding Proposed Agency Information Collection Activities (RFC) issued by the Board of Governors of the Federal Reserve System. The RFC requests comment on proposed information collection activities (surveys) and specifically (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information. These surveys would be designed to collect information needed to support the Federal Reserve System's role in the retail payments system.

**NACHA General Comments.**

The ACH Network enables the direct movement of money and information from one bank account to another. The ACH Network plays an important role in the payments landscape, serving as a safe, efficient, high-quality and ubiquitous payments system that enables billions of Direct Deposit via ACH and Direct Payment via ACH payments annually.

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[1] Since 1974, NACHA – The Electronic Payments Association has served as trustee of the ACH Network, managing the development, administration and rules for the payment network that universally connects all 12,000 financial institutions in the U.S. moving money and information directly from one bank account to another. Through its collaborative, self-governing model, education, and inclusive engagement of ACH Network participants, NACHA facilitates the expansion and diversification of electronic payments, supporting Direct Deposit and Direct Payment via ACH transactions, including ACH credit and debit payments; recurring and one-time payments; government, consumer and business transactions; international payments; and payments plus payment-related information. Through NACHA's expertise and leadership, the ACH Network is now one of the largest, safest, and most reliable systems in the world, creating value and enabling innovation for all participants. Visit nacha.org for more information.

The Federal Reserve's triennial payments study serves as a benchmark for the payments industry and provides data that is otherwise unavailable. This unique information identifies industry trends and shapes new opportunities. As such, NACHA has used the information collected from previous surveys to support strategic planning for the ACH Network, and in working with the industry to support payments innovation.

NACHA views the proposed collection of information as consistent with and central to the Federal Reserve's functions as they relate to the promotion of the safety and efficiency of the domestic payments system, which is integral to the national economy. The information that is collected and publicly shared by the Federal Reserve is used in whole or in part by diverse parties in the private and public sectors that have an interest in the continued use and development of solutions that leverage the domestic payments system in a safe and efficient manner.

With the broad reliance on the information, the veracity of the data and the credibility of the party responsible for its collection, analysis and dissemination are critical. As currently written, NACHA has concerns that results generated from the survey relating to ACH usage and ACH returns will not be fully accurate, and therefore comparisons and analysis between payment types will not be fully valid. NACHA respectfully submits the following comments on the proposed 2016 Depository and Financial Institutions Payments Survey as recommendations to enhance the quality, utility and clarity of the information to be collected

Given the Federal Reserve's unique role in the domestic payments system, relationship with entities that utilize it, and demonstrated proficiency and reputation in this regard, NACHA supports the Federal Reserve activities as proposed in FR 3066a, b, c, and d. NACHA does not believe respondents would find the information collection burdensome. In addition, costs to provide such information should be *deminimus*.

**NACHA's Concerns with Aspects of the ACH Payments Survey.**

With respect to the section on "ACH Payments," NACHA recommends the following changes:

First, with respect to the section on "ACH Returns," NACHA recommends the following changes:

- Questions on ACH return volume should be asked of Originating Depository Financial Institutions ("ODFIs"). ODFIs are the entities that originate ACH transactions and are in the best position to monitor and report on transaction volume, value, and returns. ODFIs are required to monitor return transactions and are in the nest position to deliver accurate data. To the extent that such questions are asked of RDFIs, the survey language in Questions 1 and 2 in "ACH Returns" should be modified to reflect that an RDFI does not "receive" a return entry, but rather "originates" a return entry.

- In Question 2, asking RDFIs to answer whether returns relate to fraud or suspected fraud will not generate reliable data. An RDFI is not in a position to determine whether any specific transaction to a customer's account was the result of fraud. Rather, the *NACHA Operating Rules* are designed to make an accountholder whole when the accountholder reports to his/her financial institution

that a transaction was not authorized (a consumer is not asked whether a payment is fraudulent, only whether a payment was not authorized). Regulation E, the governing regulation of consumer electronic fund transfers, speaks to unauthorized transactions as well. An unauthorized transaction includes a payment made not on the due date, a payment in an amount other than that authorized by a consumer, or the failure by the payee to give proper notice. None of these reasons would constitute fraud. An RDFI simply cannot collect accurate data about which transactions, returned as unauthorized, constitute fraudulent transactions. Since the warranty that a transaction is properly authorized is made by the ODFI, it is in a better position to determine the underlying cause of the return for a reason of unauthorized, and the ODFI *may* be able to assess any losses as a result of such unauthorized return .

Second, with respect to the section on "ACH Payments," NACHA recommends the following changes:

- Questions throughout the section on ACH volume and value, and returns, should consistently be asked from the perspective of the ODFI. ODFIs are the entities that choose to be in the ACH business, and are in the best position to monitor and report on transaction volume, value, and returns. This would ensure the best and most accurate data collection on ACH payments. The survey instrument currently mixes questions from an ODFI and RDFI perspective (Questions 1 and 2), which could be confusing to respondent, and will not lead to the most accurate data. If desired, the survey could request ACH volume and value figures from both the Receiving Depository Financial Institution (RDFI) and ODFI perspective to the extent that this data is needed to validate volume and value data submitted from ODFIs.

- The survey instrument correctly and appropriately describes offset entries as "on-us" – i.e., within a single financial institution (see explanation prior to Question 4). When asking ODFIs how they process offset entries (Question 6), we recommend changing the word "settle" to "offset." In the available responses, we recommend parallel language construction so that the respondents will not be confused as to what is being asked and answered. For clarity, we show the full question and available responses with our recommended changes.

  "Question 6: As an ODFI, how did your institution internally offset ACH transactions so that funds were debited or credited to the correct accounts? (Check all that apply.)

  Responses: "Internally through our ACH system"
  "Internally through another funds transfer method (e.g., book transfer)"
  "Don't know"

- Asking RDFIs about "network offset entries" (Question 12) will not produce meaningful or reliable data. First, as offset entries are already described as on-us, the concept of a "network offset entry" is contradictory and confusing. We recommend deleting this confusing phrase from the survey instrument entirely. On the assumption that the question is actually intending to ask about balanced files, RDFIs have no means of determining from the data contained within an ACH file whether any ACH payment it receives was originated as part of a balanced file. Accordingly,

Question 12 should be deleted as an RDFI cannot answer this question accurately from the information it receives with an ACH entry.

- Throughout the section, the use of the phrase "network on-us" (for example, Questions 7 and 8) will be confusing to many respondents. Generally, ACH practitioners differentiate between "ACH Network" payments (i.e., those that use a Network operator) and "ACH on-us" payments (those that do not use a Network operator, but instead remain within a single institution). To the extent that an ODFI sends a file to an ACH Network Operator for which it is also the RDFI, both the Network Operators and the financial institutions own systems will count those transactions as Network volume.

Third, with respect to the section on "Unauthorized Third-Party Payment Fraud," NACHA provides the following comment:

There is no introductory or descriptive language to explain the purpose of the section. On its face, it appears that the survey questions are asking only for transaction volume and value information that is already being requested in other sections of the survey. It does not ask about losses or have any other description. If Question 3 is simply asking for "fraudulent" ACH entries received, an RDFI will not be able to provide reliable data for comparative purposes on fraudulent ACH debits received. As noted above, an RDFI is not in a position to determine whether any specific transaction to a customer's account was the result of fraud. For instance, returns for unauthorized reasons in the ACH are more directly akin to chargebacks on the card networks (all chargebacks – not just chargebacks for merchant fraud), but RDFIs, that do not have a way to determine fraud, may use returns as unauthorized as a proxy. These will lead to an inaccurate direct comparison between payment methods for fraud. Additionally, RDFIs do not bear losses for unauthorized payments they return, so the value reported in this section by RDFIs does not equate to any loss figures. Unfortunately, the previous survey in 2013 and subsequent reporting erred in making direct comparisons of third-party fraud among various payment systems, which are structured differently, and have different rules and regulatory requirements, and then made assumptions about losses which were not correct.

Last, the survey instrument references a Glossary, but no Glossary was included as part of the materials included in the RFC. Therefore, we do not have any additional information with which to determine whether there are other definitions or interpretations of the words used in the survey instrument.

If I can be of further assistance, please do not hesitate to contact me at (703) 561-3943 or bsullivan@nacha.org.

Sincerely,

/S/

William D. Sullivan
Senior Director & Group Manager
Government & Industry Relations