

APPENDIX EIGHT — RULE COMPLIANCE AUDIT REQUIREMENTS

Participating DFIs must comply with all provisions of these rules and conduct an audit of such compliance on an annual basis. A Participating DFI's audit obligation is not limited to compliance with any specific rule or group of rules, and the descriptions of rules contained within this Appendix Eight are not intended to modify or limit the language of the rules themselves or the obligation of Participating DFIs to comply with, or to audit compliance with, such rules.

This Appendix Eight provides Participating DFIs and any Third-Party Service Providers performing functions of ACH processing on behalf of those DFIs with highlights of the most critical components of an audit of compliance with these rules. The requirements relate solely to compliance with these rules and do not address other audit considerations of financial institution of ACH policies, procedures or regulatory compliance. A Participating DFI may wish to audit other aspects of its ACH operations in conjunction with its annual rules compliance audit. These aspects could include OFAC compliance, ACH business continuity plans, ACH risk management policies, and compliance with 31 C.F.R. Part 210 and the Green Book for processing Federal Government ACH transactions.

~~This Appendix Eight provides the requirements for an audit of compliance with these rules. The intent of these provisions is to provide each Participating DFI, and any third-party service provider that provides ACH services to the Participating DFI, with the specifications for a review of its compliance with the ACH rules. Further, the intent is, through the use of the audit mechanism, to obtain compliance with those requirements of these rules that have a direct impact on the quality of ACH services and the satisfaction of both Participating DFIs and their customers. Participating DFIs should be aware that they are required to comply with all provisions of these rules; however, this Appendix Eight governing audit compliance focuses specifically on certain rules provisions that are described in Sections 8.2 (Audit Requirements for Participating DFIs) and 8.3 (Audit Requirements for ODFIs) of this Appendix Eight. The following requirements relate solely to compliance with ACH rules and, thus, do not cover routine audit considerations of financial institution policies and procedures that most institutions will also want to review. Institutions are also strongly encouraged to review government payment regulations as outlined in Title 31 C.F.R. Part 210.~~

SECTION 8.1 General Audit Requirements

~~Each Participating DFI, and any third-party service provider Third-Party Service Provider that provides ACH services to the Participating DFI, shall, in accordance with standard auditing procedures, conduct an internal or external audit of compliance with provisions of the ACH rules in accordance with the requirements of this Appendix Eight. These audit provisions do not prescribe a specific methodology to be used for the completion of an audit but identify key rule provisions that should be examined during the audit process. Such An annual audit shall be conducted under these Rule Compliance Audit Requirements no later than December 1 of each year. This audit shall be performed under the direction of the audit committee, audit manager, senior level officer, or independent (external) examiner or auditor of the Participating DFI or third-party service provider Third-Party Service Provider. The Participating DFI and its third-party service provider Third-Party Service Provider must retain proof that they have completed an audit of compliance in accordance with these rules. Documentation supporting the completion of an audit must be (1) retained for a period of six years from the date of the audit, and (2) provided to the National Association upon request. Failure of a Participating DFI to provide proof of completion of an audit according to procedures determined by the National Association may be considered a Class 2 rule violation pursuant to Appendix Eleven, subsection 11.3.7 (Fines and Penalties).~~

SECTION 8.2 Audit Requirements for All Participating DFIs

~~All Participating DFIs, as RDFIs, and their third-party service providers Third-Party Service Providers shall conduct the following examination audit of ACH operations, concerned with receiving ACH entries: These audit specifications apply generally to all Participating DFIs, regardless of a Participating DFI's status as an ODFI or RDFI.~~

- A. ~~Verify that records of entries, including return and adjustment entries, transmitted from or to an ACH Operator are retained for six years from the date the entry was transmitted. Verify that a printout or reproduction of the information relating to the entry can be provided to the Participating DFI's customer or any other Participating DFI or ACH Operator that originated, transmitted, or received the entry. (Article One, Subsection 1.7.1)~~
- B. ~~When electronic records are used, verify that such records (1) accurately reflect the information contained within the record, and (2) are capable of being accurately reproduced~~

for later reference, whether by transmission, printing, or otherwise. (*Article One, Subsection 1.7.2*)

- C. Verify that the Participating DFI completed an audit of its compliance with the rules in accordance with this Appendix Eight for the previous year. Verify that the Participating DFI has addressed all issues raised during the previous audit. (*Article One, Subsection 1.2.1*)
- D. Verify that required encryption is used for banking information transmitted via an Unsecured Electronic Network. (*Article One, Section 1.6*)
- E. Verify that the Participating DFI has reported and paid to the National Association all annual fees and per-entry fees for each commercial, inter-bank or Federal Government Entry that is transmitted or received by the Participating DFI, including those Entries that are not processed through an ACH Operator but are exchanged with another non-affiliated Participating DFI (i.e., direct send transactions). (*Article One, Section 1.3*)

SECTION 8.3 Audit Requirements for RDFIs

In addition to the audit procedures outlined in Sections 8.1 (General Audit Requirements), and 8.2 (Audit Requirements for All Participating DFIs) of this Appendix Eight, all RDFIs and their Third-Party Service Providers shall conduct an audit of the following relating to the receipt of ACH entries:

- ~~C. A.~~ Verify that prenotifications received are for valid accounts and that when a prenotification is not processable or is erroneous, the prenotification is rejected on a timely basis through the use of return entry procedures or that changes are requested through the Notification of Change procedure. (*Article Four, Subsection 4.1.2*)
- B. Verify that, if the RDFI chooses to initiate Notifications of Change, such entries are transmitted within two banking days of the Settlement Date of the entry to which the NOC relates, with the exception of NOCs due to merger, acquisition, or other similar events. (*Article Six, Subsection 6.3.1*)
- ~~D. C.~~ Verify that, subject to the RDFI's right of return, all types of ACH entries and prenotifications are accepted. Verify that the RDFI has policies in place regarding the acceptance of XCK entries. Verify that the RDFI has policies in place regarding the acceptance of entries to non-

transaction accounts. (*Article Four, Subsection 4.1.3*)

- ~~E. D.~~ Review records and procedures to ensure Verify that funds from ACH credit entries are made available to the Receiver for withdrawal or cash withdrawal on Settlement Date. In the case of PPD credit entries made available to the RDFI by 5:00 p.m. local time on the banking day prior to the Settlement Date, ensure that funds are made available to the Receiver for withdrawal or cash withdrawal no later than the opening of business on the Settlement Date and that debit entries are not posted prior to the Settlement Date. (*Article Four, Subsections 4.4.1 and 4.4.2*)
- F. E. For Consumer Accounts, verify Verify that the RDFI sends or makes available as part of the account statement for consumer customers the minimum descriptive information concerning each credit or debit entry consistent with the requirements of Appendix Four (Minimum Description Standards). (*Article Four, Section 4.5; Appendix Four, Section 4.1*) For ARC, BOC, POP, RCK, and XCK entries, also verify that the RDFI sends or makes available, as part of the account statement for consumers, the contents of the Check Serial Number Field with respect to each such entry. For POP entries, also verify that the RDFI sends or makes available, as part of the account statement for consumers, the contents of the Terminal City Field and Terminal State Field with respect to each such entry:
- For non-Consumer Accounts, verify that the RDFI sends or makes available to each of its Receivers the contents of the Check Serial Number Field within each ARC, BOC, and POP entry. (*Article Four, Section 4.5; Appendix Four, Section 4.2*)
- G. ~~F.~~ For all entries except RCK;
- review records and procedures to determine Verify that returned entries (including debit entries to a corporate account returned as unauthorized) including rejected prenotifications, are received by the RDFI's ACH Operator by its deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the second banking day following the Settlement Date of the original entry. (*Article Six, Subsection 6.1.2*)
- Verify that permissible return entries (i.e., the late return of unauthorized debit entries to non-Consumer Accounts) are transmitted

with the permission of the ODFI and utilize the appropriate Return Reason Code. (*Article Eight, Section 8.3; Appendix Five*) For purposes of the preceding sentence, the term second banking day shall refer to the second banking day of the RDFI's ACH Operator, and the term Settlement Date of the original entry shall refer to the Settlement Date of the original entry that is being returned.

Review records and procedures to ensure Verify that dishonored return entries received by the RDFI are handled appropriately, and that contested dishonored return entries and corrected returns are initiated in a timely manner. (*Article Six, Subsections 6.2.2 and 6.2.4; Appendix Five*)

Verify that the RDFI utilizes Return Reason Codes and Contested Dishonored Return Reason Codes that accurately describe the reason for the return. (*Appendix Five, Section 5.4*)

- H. G. Review internal procedures to ensure Verify that the return of an RCK entry is transmitted to the RDFI's ACH Operator by midnight of the second banking day following the banking day of receipt of the presentment notice. (*Article Two, Subsection 2.8.4*)
- H. Verify that a return for any credit entry returned to the RDFI by the Receiver is transmitted to the RDFI's ACH Operator by midnight of the banking day following the banking day of the RDFI's receipt of the entry from the Receiver. Also verify that the RDFI returns all credit entries that are not credited or otherwise made available to its Receivers' accounts by midnight of the banking day following the Settlement Date. (*Article Six, Subsections 6.1.4, 6.1.5*)
- I. Verify that, when the RDFI has agreed to do so, it has returned or adjusted an entry in response to an ODFI's request for the return or adjustment of an erroneous entry initiated by the ODFI (R06). (*Article Eight, Section 8.2*)
- J. Verify that, for consumer entries except ARC, BOC, POP, RCK, TEL, and Single Entry WEB entries, the RDFI has acted on stop payment orders placed with the RDFI at least three banking days prior to the scheduled date of the transfer. For corporate entries, as well as for ARC, BOC, POP, RCK, TEL, and Single Entry WEB entries, verify that the RDFI has acted on stop payment orders that have been received in such time and in such manner that allow the RDFI to act on the stop payment order prior to acting on the debit entry. Verify that the RDFI
- is aware that Return Reason Code R08 can be used with any Standard Entry Class Code that carries dollar value. (*Article Eight, Sections 8.4, 8.5; Appendix Five*)
- I. Review internal procedures to ensure Verify that, for each RCK entry for which a stop payment has been placed on the item to which the RCK entry relates and for each ARC or BOC entry for which a stop payment order has been placed on the source document to which the ARC or BOC entry relates, the adjustment entry is received by the RDFI's ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. (NOTE: No written statement under penalty of perjury is required for entries returned for these reasons.) Verify that the RDFI has documented procedures with respect to the proper use of Return Reason Codes R38 (Stop Payment on Source Document) and R52 (Stop Payment on Item). (*Article Eight, Subsections 8.7.3 and 8.7.4; Appendix Five*)
- J. K. Review records and procedures to ensure Verify that written statements under penalty of perjury are obtained from consumers for all returns bearing Return Reason Codes R05, R07, R10, R37, R51, and R53, and that each adjustment entry is received by the RDFI's ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. Verify that copies of written statements under penalty of perjury are provided to the ODFI within the required time frame, when such copies are requested, in writing, by the ODFI. (*Article Eight, Section 8.6; Appendix Five*)
- K. L. Review internal procedures and customer agreements to ensure compliance with UCC Article 4A with respect to ACH transactions: In the case of a credit entry subject to UCC Article 4A, verify the RDFI has provided the Receiver with proper notice to ensure compliance with UCC Article 4A with respect to ACH transactions. (*Article Two, Subsection 2.1.11*)
- L. Verify that, with the exception of NOCs due to merger or acquisition, Notification of Change entries are transmitted within two banking days

of the Settlement Date of the entry to which the NOC relates:

- M. Review records and procedures to ensure Verify that, when requested to do so by the Receiver, the RDFI provides all payment-related information transmitted with CCD, CIE, and CTX, and IAT entries to the Receiver by the opening of business on the second banking day following the Settlement Date of the entry. (*Article Four, Subsection 4.4.3*)
- N. Review internal procedures to verify that, for consumer entries except ARC, BOC, POP, RCK, TEL, and Single Entry WEB entries, the RDFI has acted on stop payment orders placed with the RDFI at least three banking days prior to the scheduled date of the transfer. For corporate entries, as well as for ARC, BOC, POP, RCK, TEL, and Single Entry WEB entries, verify that the RDFI has acted on stop payment orders that have been received in such time and in such manner that allow the RDFI to act on the stop payment order prior to acting on the debit entry.
- Ø. Review internal procedures to ensure that, for each entry for which any banking information, including, but not limited to, an Entry, Entry Data, a routing number, an account number, and a PIN or other identification symbol, is transmitted or exchanged between an RDFI and an ACH Operator, or an RDFI and a Third-Party Service Provider, via an Unsecured Electronic Network, the information is (1) encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or (2) transmitted or received via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology.

~~Transmissions or exchanges of banking information over an Unsecured Electronic Network by means of voice or keypad inputs from a wireline or wireless telephone are not subject to this requirement unless the telephone is used to access the Internet.~~

SECTION 8.3 8.4 Audit Requirements for ODFIs

In addition to the audit procedures outlined in section sections 8.1 (General Audit Requirements) and 8.2 (Audit Requirements for All Participating DFIs) of this Appendix Eight, ODFIs and their ~~third-party service providers~~ Third-Party Service Providers shall conduct

an audit of ACH operations that includes the following reviews of ~~the following~~ procedures relating to the origination of ACH entries:

- A. ~~Verify that records of entries, including return and adjustment entries, transmitted from or to an ACH Operator are retained for six years from the date the entry was transmitted. Verify that a printout or reproduction of the information relating to the entry can be provided to the Participating DFI's customer or any other Participating DFI or ACH Operator that originated, transmitted, or received the entry.~~
- B. ~~When electronic records are used, verify that such records (1) accurately reflect the information contained within the record, and (2) are capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.~~
- C. A. Ensure Verify that agreements have been made with all Originators (corporate customers) or Third-Party Senders that bind the customer Originator or Third-Party Sender to the ACH these rules, and that, within such agreements, the Originator or Third-Party Sender acknowledges that entries may not be initiated that violate the laws of the United States. With respect to IAT entries, verify that agreements contain all necessary provisions. (*Article Two, Subsection 2.1.1*)
- ~~D. B.~~ Verify that, if applicable, agreements have been made with all Sending Points originating transactions on behalf of the ODFI. (*Article Two, Subsection 2.2.1.11*)
- E. ~~Review internal procedures and customer agreements to ensure compliance with UCC Article 4A with respect to ACH transactions.~~
- F. C. Review internal procedures to determine Verify that exposure limits are established for each corporate Originator or Third-Party Sender, that these procedures provide for the exposure limits to be reviewed periodically, and for entries initiated by these Originators or Third-Party Senders to be monitored relative to the exposure limits across multiple settlement dates. (*Article Two, Subsection 2.1.12*)
- D. For IAT entries, also ensure verify that the ODFI ~~has implemented procedures to monitors~~ the payments system risk associated with the initiation of such entries by each Originator or Third-Party Sender. (*Article Two, Subsection 2.1.12*)

- E. For WEB entries, ~~also review internal procedures to ensure~~ verify that the ODFI has (1) established procedures to monitor the credit-worthiness of each Originator or Third-Party Sender on an on-going basis, (2) established an exposure limit for that Originator or Third-Party Sender, (3) implemented procedures to review that exposure limit periodically, and (4) implemented procedures to monitor entries initiated by that Originator or Third-Party Sender relative to its exposure limit across multiple settlement dates. (*Article Two, Subsection 2.11.2.3*)
- F. Verify that the ODFI accepts return entries that comply with Appendix Five of these rules and are transmitted by the RDFI within the time limits established by these rules. Verify that the ODFI informs the Originator of returned entries in a proper manner. Verify that dishonored return entries are transmitted within five banking days after the Settlement Date of the return entry and that contested dishonored return entries are accepted, as required by these rules. Verify that the ODFI is using return reason codes in an appropriate. (*Article Six, Subsections 6.1.6, 6.2, and 6.2.2*)
- G. ~~Review internal procedures to ensure~~ Verify that information relating to NOCs and Corrected NOCs is provided to each Originator or Third-Party Sender within two banking days of the Settlement Date of the NOC or Corrected NOC in accordance with Appendix Six (Notification of Change). Verify that refused NOCs are transmitted within fifteen (15) days of receipt of an NOC or corrected NOC. (*Article Six, Subsection 6.3.2 and Section 6.4*)
- H. With the exception of IAT entries to non-Consumer Accounts, CCD entries, CTX credit entries, and XCK debit entries, verify that the ODFI responds to an RDFI's request for a copy of an authorization within ten (10) banking days at no charge. (*Article Four, Subsection 4.1.1*)
- ~~H. I.~~ ~~Review internal procedures to ensure~~ Verify that, when agreed to by the ODFI, Permissible Return Entries are accepted in accordance with Article Eight, section 8.3 (ODFI Agrees to Accept CCD or CTX Return). (*Article Eight, Section 8.3*)
- J. Verify that the ODFI has provided the Originator with proper notice to ensure compliance with UCC Article 4A with respect to ACH transactions. (*Article Two, Subsection 2.1.10*)
- ~~I. K.~~ Verify that the ODFI has utilized a commercially reasonable method to establish the identity of
- each Originator or Third-Party Sender that uses an Unsecured Electronic Network to enter into a contractual relationship with an ODFI for the origination of ACH transactions. When an ODFI has a relationship with a Third-Party Sender rather than with an Originator directly, also verify that the Third-Party Sender has utilized a commercially reasonable method to establish the identity of each Originator that uses an Unsecured Electronic Network to enter into a contractual relationship with the Third-Party Sender for the origination of ACH transactions. (*Article Two, Subsection 2.2.1.7*)
- L. Verify that Reversing Entries and Reversing Files are originated in accordance with the requirements of these rules. (*Article Two, Subsections 2.4 and 2.5*)
- ~~J. M.~~ For BOC entries, verify that the ODFI has (1) employed commercially reasonable procedures to verify the identity of each Originator or Third-Party Sender transmitting such entries, and (2) established procedures to document specific information with respect to each Originator, as required by these rules, and that, upon request, such information is provided to the RDFI within the required time frame. (*Article Two, Subsections 2.10.3.1, 2.10.3.2 and 2.10.3.3*)
- N. Verify that the ODFI has reported information on each Originator or Third-Party Sender, as requested by the National Association. (*Article Two, Section 2.17*)
- ~~K. O.~~ ~~Ensure~~ Verify that Originators or Third-Party Senders are kept informed of and are in compliance with the ODFI has kept Originators and Third-Party Senders informed of, and that they are in compliance with, their obligations on a continuing basis, including requirements that: under these rules, as defined by Articles Two, Three, and Five.
- ~~(1) the Originator obtain the Receiver's authorization for entries, and that copies of such authorizations are provided to the Receiver in accordance with the requirements of these rules.~~
- ~~(2) if Originators choose to initiate prenotifications, those prenotifications are sent as required by the rules:~~
- ~~(3) entries returned as "R07 Authorization Revoked by Customer", "R08 Payment Stopped", or "R10 Customer Advises Not Authorized" are not reinitiated unless subsequent authorization of their customer~~

- has been obtained, and entries returned as “R05 Unauthorized Debit to Consumer Account Using Corporate SEC Code” are not reinitiated unless (a) subsequent authorization of their customer has been obtained, and (b) the Standard Entry Class Code has been corrected.
- (4) entries returned for R01 (Insufficient Funds) or R09 (Uncollected Funds) are not reinitiated in excess of the limits prescribed by these rules.
 - (5) upon receipt of returns relating to prenotifications indicating that the RDFI cannot accept such entries, such entries are not initiated.
 - (6) upon receipt of Notifications of Change, requested changes should be made within six banking days or prior to the initiation of the next entry, whichever is later.
 - (7) reversing files and reversing entries are transmitted to the Receiving ACH Operator in such time as to be transmitted or made available to the RDFI within five banking days following the Settlement Date of the erroneous entry or file.
 - (8) Originators initiating POP entries provide the Receiver with a receipt that contains information relating to the POP entry, as required by these rules.
 - (9) Originators initiating POP entries void and return to the Receiver the source document used for the ACH transaction.
 - (10) Originators initiating POP entries have employed a reading device to capture the Receiver’s routing number, account number, and check serial number from the source document.
 - (11) Originators initiating WEB entries have employed a commercially reasonable fraudulent transaction detection system to screen such entries.
 - (12) Originators initiating WEB entries have used commercially reasonable procedures to verify that routing numbers are valid.
 - (13) Originators initiating WEB entries have employed commercially reasonable methods of authentication to verify the identity of each Receiver.
 - (14) Originators initiating WEB entries conduct annual audits to ensure that the financial information they obtain from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use, and (3) network security to ensure secure capture, storage, and distribution.
 - (15) Originators initiating entries for which any banking information, including, but not limited to, an Entry, Entry Data, a routing number, an account number, and a PIN or other identification symbol, is transmitted or exchanged between a Receiver and an Originator, an Originator and an ODFI, or an Originator and a Third-Party Service Provider, via an Unsecured Electronic Network, have, prior to the key entry and through transmission of any banking information, (1) encrypted the banking information using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or (2) transmitted or received the banking information via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology.
- Transmissions or exchanges of banking information over an Unsecured Electronic Network by means of voice or keypad inputs from a wireline or wireless telephone are not subject to this requirement unless the telephone is used to access the Internet.
- (16) for each TEL entry, the Originator (1) has employed commercially reasonable procedures to verify the identity of the Receiver, and (2) has utilized commercially reasonable procedures to verify that routing numbers are valid.
 - (17) for ARC and RCK entries, the Originator has provided the required notice to Receivers in a clear and conspicuous manner. For POP entries, the Originator has, at the point of purchase, posted the required notice in a prominent and conspicuous location and provided each Receiver with a copy of the required notice or language that is substantially similar.
 - (18) for BOC entries, the Originator has (1) at the point of purchase, posted the required notice in a prominent location and provided

~~each Receiver with a copy of the required notice language; (2) employed commercially reasonable procedures to verify the identity of the Receiver; (3) employed, during initial processing of the BOC source document, a MICR reading device to electronically capture the Receiver's routing number, account number, and check serial number; and (4) employed commercially reasonable methods to securely store all source documents and banking information related to BOC entries.~~

- ~~— (19) for ARC entries, the Originator has (1) employed, during initial processing of the ARC source document, a MICR reading device to electronically capture the Receiver's routing number, account number, and check serial number; and (2) employed commercially reasonable methods to securely store all source documents until destruction and all banking information relating to ARC entries.~~

APPENDIX NINE — COMPENSATION RULES

SECTION 9.1 Scope

The rules in this Appendix Nine govern the settlement of claims for compensation between Participating DFIs. These rules apply regardless of the original source or ultimate beneficiary of any entry, the manner in which the entry was transmitted, or the nature of the transaction to which the entry relates. A compensation claim shall be paid for an entry only if the loss suffered by the claimant is at least \$200 per that entry. The amount of loss suffered by a claimant shall be calculated using the applicable formula provided in this Appendix Nine, excluding the administrative fee of \$200 per entry added to or subtracted from such formula and adding any applicable Deposit Insurance Assessment as described in subsection 9.5.2 (Deposit Insurance Assessment) of this Appendix Nine.

SECTION 9.2 Nature of the Rules

Not every possible scenario concerning a compensation claim is explicitly addressed in this Appendix Nine. When a meritorious claim for compensation is not covered by these rules, Participating DFIs are expected to settle the claim so that no Participating DFI is unjustly enriched or injured. In general, compensation related to a claim must not exceed the benefit that was received by the Participating DFI obligated to pay compensation.

However, compensation may include interest and penalties incurred by a Participating DFI as a result of an overdraft. Payment or a request for payment of compensation under these rules does not constitute and shall not be construed as an admission of negligence or fault on the part of any Participating DFI involved.

SECTION 9.3 Manner of Payment

A compensation payment may be made by an entry or by check. Participating DFIs may alter the manner of payment of compensation by prior mutual agreement.

SECTION 9.4 Beneficiaries

Only Participating DFIs shall have any rights under these rules. These rules do not confer any right on any other person.

SECTION 9.5 Definitions

SUBSECTION 9.5.1 "Federal Funds Rate"

means the average of each day's Federal Funds Rate for the days that a Participating DFI is, under these rules, to include in the applicable formula used to calculate compensation. The Federal Funds Rate is that rate published on a daily basis by the Federal Reserve Bank of New York. For any day on which a published rate is not available, the Federal Funds Rate is considered to be the same as the immediately preceding published rate.

SUBSECTION 9.5.2 "Deposit Insurance Assessment"

means either:

- (1) the amount of the increase, if any, in an FDIC assessment paid or payable by the RDFI because the relevant entry increased the base upon which the FDIC assessment is calculated. The amount of the increase will be calculated using the assessment rate adopted by the FDIC for the lowest risk classification in its risk-related schedule.

or

- (2) in the case of credit unions, the amount of the increase, if any, in (a) the amount of deposits required to be maintained by the RDFI with the NCUSIF (equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year) because the relevant entry increased the base upon which the deposits required to be maintained will be calculated, and (b) the increase, if any, in the deposit insurance premium paid or payable by the RDFI to the NCUSIF for that insurance year (equaling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year) because the

SUBSECTION 10.5.3 Arbitration Procedure C

Cases subject to Arbitration Procedure C will be presented and the decisions reached according to the following requirements: (1) If a hearing is to be held, the arbitrators shall set a hearing date which shall not be less than ninety (90) days after each party has received notification of the selection of the arbitrators; (2) The National Association shall provide both parties with at least thirty (30) days prior notice of the hearing; (3) Following the hearing, the arbitrators shall have thirty (30) days to render their decision. The amount of the award of damages may not exceed the amount of damages claimed in the complaint; (4) The arbitrators may adopt such rules and procedures with respect to evidence and other procedural and substantive matters not inconsistent with these rules as they may deem appropriate; (5) The decision of the arbitrators shall be based upon the rules insofar as they are applicable; (6) Neither party shall initiate contact with any arbitrator concerning the subject matter of the dispute unless the other party is present; (7) Each party shall pay its own expenses, including attorneys' fees, in connection with the arbitration; and (8) The arbitrators shall be entitled to recover a part or all of their travel and other expenses in connection with the arbitration and the arbitrators' stipend from either party, as determined by the arbitrators.

SECTION 10.6 Payment and Appeal**SUBSECTION 10.6.1 Arbitration Procedures A and B**

Payments of awards and appeals of decisions will be subject to the following requirements: (1) The party against which such amount has been assessed shall have fourteen (14) days after receiving notice of the decision in which to pay the damage award or other amount assessed against it as provided in these rules; (2) The decision of the arbitrator(s) shall be final and binding on the parties to the dispute, and judgment thereon may be entered in any court having jurisdiction. Except to the extent such a prohibition is unlawful under the laws of the state in which the party against which damages have been awarded by the arbitrator(s) is domiciled, such decision shall not be appealable to the courts.

SUBSECTION 10.6.2 Arbitration Procedure C

Payments of awards and appeals of decisions will be subject to the following requirements: (1) In the absence of an appeal to the courts, the party against which such amount has been assessed shall have fourteen (14) days after receiving notice of the decision in which to pay the damage award or other amount assessed against it as provided in these rules; (2) The arbitrators' decision shall be binding on the parties to the dispute, and judgment thereon may be entered by any court having jurisdiction. Except to the extent the parties have entered into an enforceable agreement to the contrary, either party may appeal the

arbitrators' decision to the courts. In the absence of such an appeal, the arbitrators' decision shall be final.

APPENDIX ELEVEN — RULES ENFORCEMENT

SECTION 11.1 Scope

Appendix Eleven governs the rules enforcement procedures to be applied in the event of (1) an ACH rules violation, including a breach of warranty under these rules, filed against a Participating DFI by a party to a transaction, or (2) the identification of a return rate for unauthorized entries by an Originator or Third-Party Sender that exceeds a defined threshold, or (3) the failure of a Participating DFI to comply with a direct obligation to NACHA, as defined by these rules.

This Appendix Eleven (1) defines the criteria under which a rules enforcement proceeding may be initiated for any violation of these rules; and (2) establishes the parameters under which the National Association may undertake specific actions with respect to the monitoring and reporting of activity causing potential harm to Participating DFIs or the ACH Network.

The purpose of these enforcement mechanisms is to maintain the quality of ACH services and the satisfaction of Participating DFIs and their customers by promoting compliance with these rules and reducing the risks to Participating DFIs and their customers by limiting the number of unauthorized entries.

SECTION 11.2 ODFI Reporting Requirements**SUBSECTION 11.2.1 National Association Request for Information**

If, in its sole discretion, the National Association believes that the rate that debit entries are returned as unauthorized exceeds one percent for one or more Originators or Third-Party Senders using the ODFI to originate entries, the National Association may send, via traceable delivery method, a written request to the ODFI's Chief Operating Officer for information described in Article Two, subsection 2.17 (ODFI Reporting Requirements). A copy of this request will also be sent to the ODFI's ACH Manager.

SUBSECTION 11.2.2 National Association Action on Receipt of Information Reported by ODFI

The National Association may initiate a rules enforcement proceeding pursuant to section 11.3

(National System of Fines) of this Appendix Eleven for a Class 2 Rules Violation, as defined within subsection 11.3.7.4 (Class 2 Rules Violation), if the ODFI (1) fails to provide the National Association with complete and accurate information, as required by Article Two, section 2.17 (ODFI Reporting Requirements), within ten banking days of receipt of NACHA's written request for information; (2) substantiates the claim that the Originator's or Third-Party Sender's return rate for unauthorized entries exceeded one percent, and the ODFI fails to reduce that return rate to a rate below the return threshold for unauthorized entries within sixty (60) days after receipt of the National Association's written request, pursuant to Article Two, section 2.17 (ODFI Reporting Requirements); or (3) substantiates that the Originator's or Third-Party Sender's return rate for unauthorized entries exceeded one percent, and the ODFI successfully reduced the return rate to below the return threshold within the 60-day time period, but the ODFI failed to maintain the return rate below one percent for 180 additional days.

SECTION 11.3 National System of Fines

SUBSECTION 11.3.1 Initiation of a Rules Enforcement Proceeding

A rules enforcement proceeding may be initiated for any violation of these rules. A rules enforcement proceeding may be conducted by the National Association in response to an ACH rules violation, including a breach of warranty under these rules, filed against a Participating DFI. The complainant must be a party to the transaction. A rules enforcement proceeding initiated by a party to the transaction must comply with the requirements of subsection 11.3.2 (Submission Requirements for Rules Enforcement Proceedings Initiated by a Party to the Transaction.) The Report of Possible ACH Rules Violation Form and filing instructions are located in Section IV, Chapter VI (Rules Enforcement) of the NACHA Operating Guidelines.

A rules enforcement proceeding may also be initiated and conducted by the National Association in response to (1) a violation of unauthorized entries pursuant to section 11.2 (ODFI Reporting Requirements) of this Appendix Eleven, or (2) the failure of a Participating DFI to comply with a direct obligation to NACHA, as defined by these rules. A rules enforcement proceeding initiated by the National Association must comply with the requirements of subsection 11.3.3 (Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association).

SUBSECTION 11.3.2 Submission Requirements for Rules Enforcement Proceedings Initiated by a Party to the Transaction

Each rules enforcement proceeding initiated by a party to a transaction must include a completed Report

of Possible ACH Rules Violation that includes the following information and conforms to the following requirements:

SUBSECTION 11.3.2.1 Identification of Parties

The names, addresses, and telephone numbers of the complainant and the other party involved in the dispute (the "respondent") and routing number of the respondent.

SUBSECTION 11.3.2.2 Summary of Facts

A summary of the facts of the alleged rule violation, as well as the section(s) of the rules violated. The summary shall also include information permitting identification of the particular transaction(s), the sequence of events involved, the precise nature of the violation(s), and the consequences to the complainant.

SUBSECTION 11.3.2.3 Documents Relating to Possible Rules Violation

Copies of the documents available to the complainant necessary to support the claim that an ACH rule has been violated, and of any written communications by the complainant and the respondent relating to the violation(s) asserted.

SUBSECTION 11.3.2.4 Authorization for Submitting a Rules Violation Report

The Report of Possible ACH Rules Violation shall be signed by an authorized representative of the complainant.

SUBSECTION 11.3.2.5 Deadline for Submitting a Rules Violation Report

A Report of Possible ACH Rules Violation must be submitted to the National Association within ninety (90) days of the occurrence of the rule violation(s) asserted.

SUBSECTION 11.3.2.6 Complaints Involving Multiple Participating DFIs

If the complainant is asserting rules violations against more than one Participating DFI, a separate Report of Possible ACH Rules Violation shall be filed with respect to each such Participating DFI.

SUBSECTION 11.3.3 Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association

Each rules enforcement proceeding initiated by the National Association must contain the following information and conform to the following requirements:

- a copy of the National Association's written request for information pursuant to section 11.2.1 (National Association Request for Information) of this Appendix Eleven; and
- a statement outlining the reason(s) for the initiation of a rules enforcement proceeding:
 - (1) the ODFI failed, within the required timeframe, to provide the National Association with complete and accurate information as required by Article Two, Section 2.17 (ODFI Reporting Requirements);
 - (2) the information provided by the ODFI substantiates the claim that the Originator or Third-Party Sender exceeded the return rate for unauthorized entries and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rate for entries returned as unauthorized to a rate below the return threshold for unauthorized entries within sixty (60) days after receipt of the National Association's written request, pursuant to Article Two, section 2.17 (ODFI Reporting Requirements); or
 - (3) the information provided by the ODFI substantiates that the Originator's or Third-Party Sender's return rate for unauthorized entries exceeded the return rate, and the ODFI successfully reduced the return rate to below the return threshold within the 60-day time period, but the ODFI failed to maintain the return rate below the return threshold for 180 additional days; or
 - (4) the Participating DFI failed to comply with a direct obligation to NACHA, as defined by these rules; and
- for a rules enforcement proceeding initiated in response to a violation of unauthorized entries pursuant to section 11.2 (ODFI Reporting Requirements) of this Appendix Eleven, a copy of the National Association's written request for information pursuant to section 11.2.1 (National Association Request for Information) of this Appendix Eleven.

A rules enforcement proceeding initiated by the National Association must be submitted within ninety (90) days of the occurrence of the rule violation(s) asserted.

SUBSECTION 11.3.4 Assessment of Rules Enforcement Submission

Each submission of a rules enforcement proceeding will be evaluated by the National Association to ensure that the documentation necessary to identify the incident has been included and to ascertain whether a violation of these rules appears to have occurred. If the National Association makes a preliminary determination that a violation of these rules has occurred, the National

Association will identify whether the violation is (1) the first such violation, (2) a Class 1 Rules Violation involving a recurrence of a previous violation, or (3) a Class 2 Rules Violation, and it will issue either a Notice of Possible ACH Rules Violation or a Notice of Possible Fine in accordance with this section 11.3.4. If the National Association determines that it is unclear whether a rules violation has occurred, or if the National Association believes the violation involves a Class 2 Rules Violation, it may forward the issue to the ACH Rules Enforcement Panel for additional review.

In circumstances involving (1) a submission to the rules enforcement process from a party to a transaction, identifying either a Class 1 Rules Violation or a Class 2 Rules Violation; or (2) a rules enforcement proceeding initiated by the National Association because of a Class 2 Rules Violation, the issue will be forwarded directly to the ACH Rules Enforcement Panel for evaluation and possible assessment of a fine or penalty in accordance with section 11.3.7 (Fines and Penalties).

SUBSECTION 11.3.4.1 Notice of Possible ACH Rules Violation

If the National Association determines that the violation is the first such infraction of these rules, a Notice of Possible ACH Rules Violation will be sent to the ACH Manager at the respondent Participating DFI, within ten banking days via traceable delivery method, indicating that an infraction of the rules appears to have occurred and explaining that fines may be imposed against the Participating DFI in the event that the rule violation is not corrected.

The Participating DFI will be asked to correct the problem that caused the rule violation and to respond within ten banking days after the date on which it received the Notice of Possible ACH Rules Violation. The Notice of Possible ACH Rules Violation Response Form must be sent, via traceable delivery method, to the National Association and must include either (1) an acknowledgment of the Participating DFI's recognition of and intent to correct the problem causing the rule violation, along with a statement specifying the date by which the Participating DFI will resolve the problem (Resolution Date), or (2) a statement, along with supporting documentation, that the Participating DFI does not believe that a rules infraction has occurred.

If the National Association receives the Participating DFI's completed response form and any necessary documentation within the ten-banking-day time frame, no additional action will be taken by the National Association unless (1) the National Association believes the time frame and Resolution Date asserted by a Participating DFI as necessary to resolve the problem causing the rules violation is excessive and requires review by the ACH Rules Enforcement Panel, or (2) the

National Association receives an additional submission of a rule violation report.

SUBSECTION 11.3.4.2 Notice of Possible Fine

If the National Association determines that the violation is a Class 1, Class 2, or Class 3 Rules Violation, as defined by subsection 11.3.7 (Fines and Penalties), a Notice of Possible Fine will be sent to the Participating DFI and the National Association will forward the issue to the ACH Rules Enforcement Panel to consider the imposition of a fine against the Participating DFI in accordance with subsection 11.3.7 of this Appendix Eleven.

In the Notice of Possible Fine, the Participating DFI will be asked to correct the rule violation that is the basis for the Notice of Possible Fine and to respond to the National Association within ten banking days after the date on which it received a Notice of Possible Fine. The Notice of Possible Fine Response Form must be sent, via traceable delivery method, to the National Association and must include either (1) an acknowledgment of the Participating DFI's recognition of and intent to correct the problem causing the rule violation that is the basis for the Notice of Possible Fine, along with a statement specifying the Resolution Date, or (2) a statement, along with supporting documentation, that the Participating DFI does not believe that a rules violation occurred. Where the ODFI fails to provide a complete and accurate response in accordance with the requirements of section 2.17 (ODFI Reporting Requirements), the ODFI's acknowledgment to the Notice of Possible Fine must include the reporting information required by section 2.17. In situations involving the ODFI's affirmation of a return rate for unauthorized entries in excess of the return threshold, the ODFI's acknowledgment to the Notice of Possible Fine must include updated information on, and the timetable for, the implementation of the ODFI's plan to reduce its return rate.

If the National Association receives the Participating DFI's completed response form and related information within the ten-banking-day time frame, and the National Association determines that the response refutes the claim in the Notice of Possible Fine, the National Association will take no additional action at that time. In all other circumstances described within this subsection 11.3.4.2, the National Association will forward the issue to the ACH Rules Enforcement Panel for its consideration and possible imposition of a fine in accordance with Section 11.3.7 (Fines and Penalties) of this Appendix Eleven.

SUBSECTION 11.3.5 Notifications

SUBSECTION 11.3.5.1 Notification on Initiation of Rules Enforcement Proceeding

An informational copy of each rules enforcement proceeding initiated under this Appendix Eleven will be

forwarded to the Regional Payments Association of both the complainant and the respondent. In the event that either party is an access participant (i.e., not a member of a Regional Payments Association), an informational copy will be forwarded to the local Federal Reserve Bank. In situations involving the initiation of a rules enforcement proceeding by the National Association pursuant to subsection 11.3.1 (Initiation of a Rules Enforcement Proceeding), an informational copy of each such rules enforcement proceeding initiated will be forwarded to the ACH Operators.

SUBSECTION 11.3.5.2 Notification on Resolution of Issue

The National Association will notify the complainant upon the resolution of the rules enforcement proceeding that either (1) the violation has been resolved or will be resolved within a certain time period, or (2) the respondent has refuted the claim of a rules violation.

SUBSECTION 11.3.6 ACH Rules Enforcement Panel

SUBSECTION 11.3.6.1 Selection of Enforcement Panel

The National Association shall maintain a list of members of the ACH Rules Enforcement Panel that have been nominated in accordance with the procedures established by the National Association.

SUBSECTION 11.3.6.2 Responsibilities of Enforcement Panel

The ACH Rules Enforcement Panel, in accordance with these rules, is the final authority regarding each of these issues:

- the imposition of any fines or penalties recommended by the National Association;
- instances in which the National Association believes the time frames and Resolution Dates asserted by the respondent Participating DFI as necessary to resolve the problem causing a rules violation are excessive;
- rules violations that the National Association believes constitute Class 1, Class 2, or Class 3 Rules Violations; and
- situations in which the National Association determines that it is unclear whether a rules violation has occurred.

SUBSECTION 11.3.7 Fines and PenaltiesSUBSECTION 11.3.7.1 Imposition of Fines/Penalties

In the event that a Participating DFI is cited with a Class 1, Class 2, or Class 3 Rules Violation, the National Association will impose a fine, subject to approval by the ACH Rules Enforcement Panel, on the Participating DFI in accordance with this section 11.3.7.

The National Association will collect a fine by transmitting an ACH debit to the account of the affected respondent Participating DFI. Each Participating DFI agrees to the payment of any fines in accordance with this process. The National Association will provide notice to the respondent Participating DFI of the date and amount of the debit at least seven banking days in advance of the Settlement Date of the debit.

SUBSECTION 11.3.7.2 Determination of Fines

The fine(s) levied against a respondent Participating DFI for an infraction(s) of these rules will be determined based on an evaluation by the National Association of whether the rules violation is a Class 1, Class 2, or Class 3 Rules Violation.

SUBSECTION 11.3.7.3 Class 1 Rules Violation

A Class 1 Rules Violation involves a recurrence of a previous rules violation. A rules violation is considered to be a recurrence of a previously reported infraction of these rules if:

- the same infraction is committed by the same Originator that transmits through the ODFI within the one-year period following the Resolution Date of the initial rules violation;
- the same infraction is committed by the same Third-Party Service Provider transmitting through or on behalf of an ODFI or receiving on behalf of an RDFI within the one-year period following the Resolution Date of the initial rules violation; or
- the same infraction is committed by the same Participating DFI within the one-year period following the Resolution Date of the initial rules violation.

Fines for recurrences may be assessed by the ACH Rules Enforcement Panel as follows:

- The first recurrence of a rules violation that will cause a fine to be levied by the National Association will result in an assessment of up to \$1,000 against the Participating DFI.
- The second recurrence of a rules violation that causes a fine to be levied by the National Association will

result in an assessment of up to \$2,500 against the Participating DFI.

- The third recurrence of a rules violation that causes a fine to be levied by the National Association will result in an assessment of up to \$5,000 against the Participating DFI.

SUBSECTION 11.3.7.4 Class 2 Rules Violation

A Class 2 Rules Violation is one in which:

- (1) the Participating DFI has not responded to either the Notice of Possible ACH Rules Violation or the Notice of Possible Fine;
- (2) the Participating DFI responds to either notice that it does not intend to correct the rules violation;
- (3) the Participating DFI (i) fails to respond completely and accurately, within the proper time frame, to the National Association's request for information in accordance with the requirements of Article Two, section 2.17 (ODFI Reporting Requirements); (ii) substantiates the claim that the Originator or Third-Party Sender exceeded the return rate for unauthorized entries and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rate for entries returned as unauthorized to a rate below the return threshold for unauthorized entries within sixty (60) days of receipt of the National Association's written request; or (iii) substantiates that the Originator's or Third-Party Sender's return rate for unauthorized entries exceeded the return rate, and the ODFI successfully reduced the return rate to below the return threshold within the 60-day time period, but the ODFI failed to maintain the return rate below the return threshold for 180 additional days. The Panel may consider the Originator's or Third-Party Sender's volume of debit entries as an extenuating circumstance in determining whether a violation under this provision constitutes a Class 2 Rules Violation.
- (4) the Participating DFI fails to provide the National Association with proof of completion of a rules compliance audit, as required by Appendix Eight (Rules Compliance Audit Requirements);
- (4) (5) the ACH Rules Enforcement Panel determines the time frame and Resolution Date asserted by a Participating DFI as necessary to resolve the problem causing the rules violation are excessive;
- (5) (6) the National Association believes that the violation causes excessive harm to one or more Participating DFIs or the ACH Network; or

- (6) (7) it is the fourth or subsequent recurrence of the same rules violation.

In situations involving a Class 2 Rules Violation, the ACH Rules Enforcement Panel may levy a fine against the respondent Participating DFI in an amount up to \$100,000 per month until the problem is resolved. Where the violation relates to a specific Originator or Third-Party Service Provider at the DFI, a separate monthly fine may be assessed to the DFI with respect to each such Originator or Third-Party Service Provider.

SUBSECTION 11.3.7.5 Class 3 Rules Violation

In any case where a Class 2 Rules Violation, as defined by subsection 11.3.7.4 (Class 2 Rules Violation), has continued for three consecutive months, the ACH Rules Enforcement Panel may determine that the violation of these rules by a respondent Participating DFI is a Class 3 Rules Violation and may levy a fine against the respondent Participating DFI of up to \$500,000 per month until the problem causing the violation is resolved.

SUBSECTION 11.3.7.6 Suspension

In circumstances where the ACH Rules Enforcement Panel has determined that there is a Class 3 Rules Violation that relates to a specific Originator or Third-Party Sender pursuant to subsection 11.3.7.5 (Class 3 Rules Violation) of this Appendix Eleven, the ACH Rules Enforcement Panel may direct the ODFI to suspend the Originator or Third-Party Sender from originating. Any such suspension shall only be lifted by the ACH Rules Enforcement Panel.

In cases where the ACH Rules Enforcement Panel has directed an ODFI to suspend an Originator or Third-Party Sender from originating, the National Association will provide notice of such suspension, and any subsequent reinstatement, to Participating DFIs, ACH Operators, and Regional Payments Associations.