

May 24, 2019

VIA EMAIL: regs.comments@federalreserve.gov

Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: FR 3066; OMB control number: 7100-0351

Dear Secretary Misback:

Nacha¹ submits this response to the Request for Comment issued by the Board of Governors of the Federal Reserve System (“Board”) regarding Proposed Agency Information Collection Activities (“RFC”). The RFC requests comment on proposed information collection activities (surveys for the Federal Reserve’s triennial payments study) 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.

Nacha’s General Comments

The Federal Reserve’s triennial payments study provides the payments industry with comprehensive payment system usage data that is otherwise unavailable. Nacha therefore supports the Board’s proposed information collection activity. The proposed collection of information is 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, and industry respondents generally should not find the information collection to be overly burdensome. Below, Nacha provides comments related to the quality of the information to be collected, and the burden of the information collection on specific respondents.

¹ Nacha is a nonprofit organization that convenes hundreds of diverse organizations to enhance and enable ACH payments and financial data exchange within the U.S. and across geographies. Through the development of rules, standards, governance, education, advocacy, and in support of innovation, Nacha’s efforts benefit all stakeholders. Nacha is the steward of the ACH Network, a payment system that universally connects all U.S. bank accounts and facilitates the movement of money and information. In 2018, there were 27 billion ACH payments, and more than \$51 trillion in value moved across the ACH Network. Nacha also leads groups focused on API standardization and B2B payment enablement.

Nacha Comments on Specific Sections

With the broad reliance by the Federal Reserve and the broader payments industry on the information collected for the triennial payments study, the quality and accuracy of the information collected is critically important. With respect to Automated Clearing House (“ACH”) information requested in FR3066a, the information that the Board collects would be more accurate and reliable if it is consistently collected from Originating Depository Financial Institutions (“ODFIs”). Past surveys have requested information of parties that are not in the best position to provide factual input; therefore, Nacha requests that information be asked of the most relevant parties to avoid inaccurate data and conclusions.

ODFIs are the entities that choose to be in the business of originating ACH transactions, and therefore are in the best position to monitor and report on transaction volume, value, and returns. Oddly, the Board’s survey would ask ODFIs to report information on originated ACH credit volume, while asking Receiving Depository Financial Institutions (“RDFIs”) to report information on received ACH debit volume. The Board would be better served by asking ODFIs to report both originated ACH credit and debit volume. This also would appropriately shift the burden of the information collection to ODFIs. Similarly, the Board’s survey would ask RDFIs to report information on ACH returns initiated; again, the parties in the best position to report on ACH returns, and most appropriately bear the reporting burden, are ODFIs, which will be able to most accurately report on the volume of returns received.

The Board proposes to discontinue questions on ACH offsets, and a variety of details on ACH returns. Nacha supports these changes. These question on offsets in previous surveys were confusing, and did not generate results that improved understanding of the payment systems.

The Board proposes to ask questions about the direct exchange of ACH entries. Nacha supports these additions, with the same caveat shared above that it should be ODFIs only that are asked to report this information, not RDFIs.

The Board proposes to ask questions about same-day settlement of ACH entries. Nacha opposes the addition of these questions. By way of comparison, the Board is not proposing to ask respondents to report volumes of any other types of so-called faster payments; therefore we do not think it is appropriate to single-out and impose an additional reporting burden on ACH respondents. Information on Same Day ACH volume is readily available from each ACH Operator, as well as the aggregated information reported quarterly and annually by Nacha, without imposing this new information reporting burden solely on ACH ODFIs and RDFIs, and while exempting participants in other faster payment systems from similar reporting burdens. To the extent that the Board disagrees and asks for this information to be collected, Nacha repeats the same caveat shared above that it should be ODFIs only that are asked to report this information, not RDFIs.

The Board proposes to restructure certain questions about Unauthorized Third-Party Payment Fraud. While Nacha has no comment on the restructuring itself, the questions regarding ACH share the same deficiencies as the other questions cited above:

1) The questions should be asked of ODFIs, and not RDFIs. Asking RDFIs to answer whether returns relate to fraud or suspected fraud will not generate reliable data. As this survey may be relied upon as a definitive source of information, Nacha asks the Fed to change the party of which the questions are asked. An RDFI is generally 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 is simply not in a position to 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, the ODFI 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.

2) The Board should not single out and impose a new burden of reporting on financial institutions regarding unauthorized ACH entries and same-day ACH settlement, when it is not asking parties in other so-called faster payment systems to report volumes of unauthorized third-party payments in those systems. In addition, Nacha thinks that RDFIs will not be able to provide accurate information regarding the breakout of unauthorized ACH entries by same-day settlement and non-same-day settlement, because whether the entry settled same day is not relevant to both the RDFI and its customer when handling an unauthorized transaction.

Thank you for the opportunity to comment on this request. If I can be of further assistance, please do not hesitate to contact me at (703) 561-1100 or mherd@nacha.org.

Sincerely,

/S/

Michael Herd
Senior Vice President, ACH Network Administration
Nacha