

2011 NACHA Rules Update

Collection of Return Entries

An amendment to the *NACHA Operating Rules* will become effective September 16, 2011, that establishes specific authorization and identification requirements for ACH debits used to collect return fees for certain checks and ACH debits that have been returned for insufficient or uncollected funds.

Summary

Used for collecting return fees from Consumer Accounts that are returned insufficient (NSF) or Uncollected Funds (UCF), may be used for Non-Consumer accounts when the original source document for an underlying ARC, BOC or POP transaction does not contain an auxiliary On-Us field.

Authorization

Authorizations must bear the SEC Code in which the authorization was obtained and must be obtained in one of the following ways:

- By providing notice to the Receiver that conforms to the Requirements of Regulation E at the time the original/underlying ACH debit is authorized/accepted.
- Authorization is obtained in writing.
- Provides authorization over the phone (SEC Code - TEL)
- Customer authorizes an ACH debit for the return fee from the Merchant's website (SEC Code – WEB)

Identification

“**RETURN FEE**” must be included in the Company Entry Description field of the Company Batch Header Record, regardless of the manner in which authorization was obtained, the nature of the transaction, or the SEC

September 2011 Special Edition

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Code used in the Entry.

The Originator will be required to identify itself in the Company Name field using the identical name that was used in the underlying ACH debit.

A Return Fee Entry related to any underlying ACH debit that carries a check serial number (ARC, BOC, POP and RCK), or related to an underlying check transaction, must carry the check serial number of the underlying transaction in the Individual Identification Number field of the Return Fee Entry.

Number and Timing of Return Fees

Allows only one Return Fee Entry in relation to an underlying transaction returned NSF/UCF, regardless of the number of times the underlying transaction is returned.

A Return Fee Entry that is itself returned NSF may be re-initiated in accordance with the rules on re-initiation.

- However, a Return Fee Entry may not be reinitiated in relation to an underlying ACH debit that is itself a Return Fee Entry.

A Return Fee Entry that is authorized by notice must have a Settlement Date that is no later than 45 days after the Settlement Date of the ACH Return Entry or the receipt of the return of the underlying check transaction.

Recurring TEL Transactions

An amendment to the *NACHA Operating Rules* will become effective September 16, 2011, that expands the scope of the TEL application to permit its use for recurring consumer transactions. An Originator using TEL for recurring debits will have to ensure that the oral authorization complies with Regulation E's writing and signature requirements for preauthorized transfers. Thus, an Originator using recurring TEL will have to ensure that its authorizations, including, for example, the use of a recorded telephone conversation, are in compliance with the e-Sign Act.

Authorization Requirements

- This rule includes the broader term "identity" to provide Originators with the flexibility to use identity credentials such as user name and password as part of the authorization. The Originator should have other records that would then link those identity credentials to the Receiver's name.
- **For purposes of complying with the *NACHA Rules*, the authorization requirements for recurring TEL Entries may be satisfied if the Originator (1) creates a recording of the oral authorization of the Receiver that satisfies the requirements described below, including via a live operator or automated voice response unit; and (2) sends a written copy of the authorization to the Receiver prior to the Settlement Date of the first Entry originated in accordance with the authorization.**
- **Oral Authorizations must:**
 - Be readily identifiable as an authorization of a recurring transfer from the Receiver's account.
 - State the terms of the recurring transfer clearly and in readily understandable terms.
 - Evidence the Receiver's identity.
 - Evidence the Receiver's assent to the

authorization.

- **Recorded Authorizations must include:**
 - The name or identity of the Receiver.
 - A telephone number for Receiver inquiries that is answered during normal business hours.
 - The date of the Receiver's oral authorization.
 - Specific authorization language.
 - The account to be debited.
 - The timing (including the start date), number and/or frequency of the debits.
 - The amount of the debit, or reference the method of determining the amount of recurring transfers.

TEL Entry Detail Record

- The Entry Detail Record format for TEL Entries will be modified to replace the 2-character Discretionary Data field with a new Payment Type Code field. An indicator will be required to identify the entry as recurring or single. Similar to WEB Entries, the Payment Type Code field for recurring TEL Entries will include a value of "R." For Single-Entry TELs, however, Originators will be able to populate this field with either an "S" or space-fill the field.

Use of Return Code R07

- This amendment will remove limitations on the RDFI's use of Return Reason Code R07, allowing it to be used to return TEL and WEB Entries. These changes will support the return of recurring TEL debits for which authorization can be revoked.

Expanded Use of the XCK Application

An amendment to the *NACHA Operating Rules* will become effective September 16, 2011, that expands the scope of the Destroyed Check Entry (XCK) application to permit its use for certain damaged checks that cannot be imaged or other check images that cannot be processed. Such additional items include images that cannot be processed through an image exchange, and items that are sufficiently damaged so that they cannot be processed or used to create an image. Although there may be check image exchange or clearing house rules to address damaged checks or images, such rules do not apply to financial institutions that do not belong to such exchanges.

Eligible Items

- Is an item within the meaning of Article 4 of the Uniform Commercial Code.
- Is a negotiable demand draft drawn on or payable through or at an office of a Participating DFI, other than a Federal Reserve Bank or Federal Home Loan Bank.
- Is in an amount less than \$2,500.
- Either (1) is contained within a cash letter that is lost, destroyed, or otherwise unavailable while in transit for presentment to a paying bank, and cannot be obtained; or (2) (A) is missing part of the MICR line but can be sufficiently repaired to create an ACH Entry; (B) is an image of an item that cannot be processed through the applicable image exchange, but has sufficient information to create an Entry; or (C) is, in whole or in part, unreadable, obscured, or mutilated in a manner that prevents automated check processing or creation of an image that can be used to produce a “substitute check” that is the legal equivalent of the original check under the Check Clearing for the 21st Century Act, Pub. L. 108-100, but has sufficient information to create an Entry.

Acceptance

- The use of XCK for the purpose of clearing these types of items will be optional for both ODFIs (Collecting Banks) and RDFIs (Paying Banks). RDFIs will retain their right to return XCK Entries for any reason for up to 60 days following the Settlement Date.

Impact

- ODFIs that want to use the XCK application for this purpose would need to be able to populate the ACH formats from captured MICR information. ODFIs may need to review deposit agreements and agreements with other banks in the collections process to ensure they have the necessary authority to initiate XCK entries.
- RDFIs may need to review their policies regarding acceptance of XCK Entries, and ensure that processes are in place to post or return the XCK Entries in conformance with their policies.

Please let us know if you have any questions about the above rule changes or would like a copy of the supplement from NACHA with the complete detail.

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