

# AMERICAN PAYROLL ASSOCIATION

July 1, 2021

Ms. Maribel Bondoc  
Manager, Network Rules  
Nacha  
2550 Wasser Terrace, Suite 4001  
Herndon, VA 20171  
Email: mbondoc@nacha.org

Re: Third-Party Sender Roles and Responsibilities – Request for Comment

Dear Ms. Bondoc:

The American Payroll Association (APA) thanks you for the opportunity to provide feedback concerning Nacha's proposed rule to clarify the roles and responsibilities of third-party senders in the ACH Network. The proposed rule would provide greater clarity for participants in the ACH network and improve security by explicitly requiring third-party senders to conduct risk assessments. The APA supports the proposed rule and believes they will result in a safer and more secure ACH Network.

These rules have been developed following high profile incident that occurred in in August 2019 when a Nested Third-Party Sender payroll service provider improperly reversed direct deposit payroll payments. APA agrees with Nacha's assertion in its request for comment that "better-defined responsibilities, and a thorough assessment of risks and Rules compliance, may have added controls that would have prevented or lessened the severity of this incident."

## **About the American Payroll Association**

The APA is a nonprofit professional association of more than 18,000 payroll professionals in the United States. Our membership also includes representatives of large, medium, and small payroll service providers who are responsible for processing payroll for an additional 1.5 million employers. In total, the APA represents those professionals responsible for paying an aggregate total of one-third of the private sector workforce. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers, while complying with applicable federal, state, and local laws. In addition, the APA's Electronic Payments Committee promotes the expanded use of direct deposit and electronic payments.

**Survey question responses**

Here are APA's responses to certain questions included in the request for comment.

1. *A Nested Third-Party Sender (TPS) relationship should be defined within the Nacha Operating Rules.*

APA strongly agrees with this statement. Greater clarity in the *Rules* will benefit participants in the ACH Network.

2. *The proposed definition of Nested Third-Party Sender appropriately covers the scenario.*

APA agrees with this statement. The definition – A Third-Party Sender that has an agreement with another Third-Party Sender to act on behalf of an Originator, and does not have a direct agreement with the ODF – is clear and explains the business relationships between the parties involved.

3. *ODFIs with TPS customers should know whether the TPS allows Nested Third-Party Sender relationships.*

APA agrees with this statement.

4. *ODFIs with TPS customers should address Nested Third-Party Sender relationships within their ACH Origination Agreements.*

APA agrees with this statement. Having the relationships addressed in the ACH Origination Agreement will help clarify the roles of the parties in the ACH Network.

5. *A Nested Third-Party Sender relationship should have an ACH Origination Agreement between the TPS and the Nested TPS.*

APA agrees with this statement. The agreement should help both parties understand their roles and obligations.

6. *A Third-Party Sender should disclose to the ODFI information about a Nested Third-Party Sender before originating entries for that Nested TPS.*

APA agrees with this statement. This should help the ODFI meet its due diligence responsibilities.

7. *ODFIs should be required to identify Third-Party Senders that allow Nested Third-Party Senders in the Risk Management Portal's TPS Registration.*

APA agrees with this statement. This will help ODFI's meet their due diligence requirements.

8. *The Rules should address the "chain of agreements" and responsibilities in Nested TPS relationships*

APA strongly agrees with this statement. Revising the rules to address the "chain of agreements" will strengthen the rules themselves by providing additional clarity to participants in the ACH Network.

9. *The Rules should address the number of levels that can exist in a Nested TPS chain.*

APA is neutral on this statement. It is unclear where a cut-off should be in the number of levels. APA does support disclosure of the various agreement levels so that the ODFI and all TPSs in the chain are aware of their responsibilities.

10. *The Rules currently are clear about whether Third-Party Senders are required to conduct ACH Risk Assessments.*

APA generally agrees that this is what is intended by the rules, but supports the explicit clarification that that is part of this proposed rule.

11. *The Rules should be explicit that TPSs must conduct ACH Risk Assessments.*

APA strongly agrees with this statement.

12. *The Rules should not attempt to prescribe specific topics or methods for Third-Party Sender risk assessments.*

For the reasons outlined in the request for comment – most notably, that attempting to prescribe the exact topics and methods for a TPS risk assessment would likely over-prescribe risk and controls for some TPSs, and fail to identify risk and controls for others – APA generally agrees with this statement. APA does suggest that there may be some minimum standards that are applicable to all risk assessments, regardless of which market they operate in. If so, perhaps a minimum standards could be set with each TPS expected to undertake other elements of a risk assessment applicable to its situation.

13. *The Rules should require Risk Assessments (by any participant) to be periodically reviewed.*

APA strongly agrees with this statement.

14. *The proposed changes would improve the management of Nested Third-Party Senders.*

APA agrees with this statement. Not only will there be more clarity for ACH Network participants, the knowledge gained by the nested third-party senders that have not conducted risk assessments could help them identify unknown risks that, once addressed, will lead to a more secure ACH Network.

15. *The proposed changes would improve the risk management practices of Third-Party Senders.*

APA agrees with this statement for the same reasons outlined in the answer to question #14 (above).

16. *The proposed changes would improve the transaction quality of the ACH Network.*

Yes. APA believes that bringing more transparency to the Originator agreements and to the relationship between Originators, Third-Party Senders, and Nested Third-Party Senders; along with additional risk assessments will result in improvements to the ACH Network.

17. *The proposed changes to an Origination Agreements should be effective on a going-forward basis (i.e., should apply to new Origination Agreements with TPSs after the effective date).*

APA strongly agrees with this statement. Allowing Origination Agreements to be revised on a going-forward basis should allow for a smooth transition to the new agreements.

18. *Indicate the estimated impact of the proposed changes to your organization in various areas: **Nested Third-Party Senders:** staffing resources and training, ACH operations, risk management systems and other; and **TPS Risk Assessments:** systems and software, staffing resources and training, ACH operations, risk management systems, and others.*

Because APA membership encompasses employers of all sizes, some of which work with a payroll service provider while others process payroll in house, it is difficult to quantify how these proposed changes will affect each organization. Broadly speaking, APA does not believe that this will have more than a minimal impact on most employers. However, payroll service providers will see a greater impact.

19. Does your organization support the proposed effective date of June 30, 2022?

Yes. APA supports the proposed effective date, especially with the proposed grace period.

20. Does your organization support a 6-month grace period (through Dec 31, 2022) for ODFIs with TPS customers to meet the new registration requirement?

Yes. APA believes the grace period will be beneficial in allowing ODFIs with TPS customers additional time to comply with the new rules.

21. Does your organization support a 6-month grace period (through Dec 31, 2022) for Third-Party Senders that have not conducted a Risk Assessment to do so?

Yes. APA believes the grace period may be needed to provide enough time for the Third-Party Senders to be informed of the new requirements and then to take the steps necessary to determine what type of risk assessment is needed and then to conduct the required assessment.

### **Conclusion**

The APA supports the proposed rules and believes that they will achieve the goals of providing greater clarity to ACH Network participants of their roles and responsibilities.

If you have any questions, please contact Curtis Tatum, whose contact information is provided below.

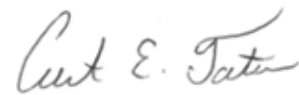
Sincerely,



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