



Compensation, Arbitration & Rules Enforcement Module 6

Disclaimer



This material is derived from collaborative work product developed by NACHA – The Electronic Payments Association and its member Regional Payments Associations.

This material is not intended to provide any warranties or legal advice, and is intended for educational purposes only. NACHA owns the copyright for the *NACHA Operating Rules & Guidelines*.

The information in this document and discussed during this presentation is the exclusive property of PaymentsFirst. It may not be copied, disclosed, or distributed, in whole, or part, without the express, written permission of PaymentsFirst.

Anti-Trust Laws

- PaymentsFirst is a not-for-profit organization and we closely adhere to all applicable laws and regulations.
- In accordance with Anti-Trust laws, we may not play any role in competitive decisions of members or their employees.
- During discussions with competitors and within the presentation materials we will and we ask participants to refrain from any discussion regarding pricing of products and services.

Compensation

- Claims of compensation between Participating DFIs
 - Loss of use of funds
 - Intend no participant to be unjustly enriched or injured
 - Not admission of negligence or fault
 - Loss suffered must be at least \$200
 - Loss suffered calculated using provided formula excluding \$200 administrative fee per entry
 - Claim not to exceed benefit received

Compensation

- Compensation claims may include
 - Failure of a payment to be transmitted timely
 - Transmission of a payment to an incorrect account or incorrect Participating DFI
 - Transmission of a duplicate entry

Compensation

- Compensation formula includes
 - Entry amount
 - Federal Funds Rate
 - Number of days
 - \$200 Administrative Fee
 - Applicable Deposit Insurance Assessment

Arbitration

- Low cost, expeditious mechanism for resolving disputes within the ACH Network, bypassing the need to resolve disputes through the court system

Arbitration

- Damages claimed must be \$250 or more
- \$250 non-refundable application fee
- Claim submitted by officer of complainant to NACHA
- Within 2 years of alleged violation

Arbitration

- Arbitration Procedure A
 - Damages of \$250 or more but less than \$10,000
 - Mandatory for both parties
 - No hearing is held
 - 1 arbitrator
 - Stipend is \$100

Arbitration

- Arbitration Procedure B
 - Damages of \$10,000 or more but less than \$50,000
 - Mandatory for both parties
 - No hearing is held
 - 3 arbitrators
 - Stipend is 1% of decision for each arbitrator

Arbitration

- Arbitration Procedure C
 - Damages are \$50,000 or more
 - Both parties must first agree to arbitration
 - Hearing is held
 - Parties can agree to Procedure B
 - Legal counsel may be present at hearing
 - 3 arbitrators
 - Stipend is 1.5% of decision for each arbitrator

Arbitration

- Selection of arbitrators
 - NACHA maintains list of arbitrators nominated
 - Procedure A
 - Each party given 10 days to delete 2 names from list of 5
 - NACHA will choose 1 arbitrator not deleted from either
 - Procedures B and C
 - Each party given 10 days to delete 3 names from list of 10
 - NACHA will choose 3 arbitrators not deleted from either

Arbitration

- Presentation of case
 - Arbitration Procedures A and B
 - Notification of arbitrator(s), party has 14 days to submit supporting information
 - Arbitrator(s) has 30 days to render decision
 - Arbitrator(s) and each party pays own expenses

Arbitration

- Presentation of case
 - Arbitration Procedure C
 - Arbitrator sets hearing date not less than 90 days after each party notified of arbitrator selections
 - At least 30 days notice provided by NACHA prior to hearing
 - After hearing, arbitrators have 30 days to render decision
 - Arbitrators entitled to recover some expenses from either party

Arbitration

- Payment and appeal
 - Arbitration Procedures A and B
 - Party has 14 days after notice to pay
 - Arbitrator(s) decision is final
 - Except as prohibited by state law, decision is not appealable to the courts

Arbitration

- Payment and appeal
 - Arbitration Procedure C
 - Absence an appeal to the courts, party has 14 days after notice to pay
 - Arbitrators decision is final in the absence of an appeal
 - Either party may appeal to the courts

Rules Enforcement

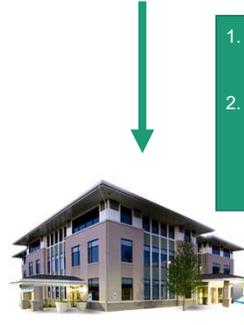
- Governs the rules enforcement procedures to be applied in the event of:
 1. A *NACHA Operating Rules* violation,
 2. The identification of an Originator or Third-Party Sender with excessive return rates, or
 3. The failure of a Participating DFI to comply with a direct obligation to NACHA

Rules Enforcement

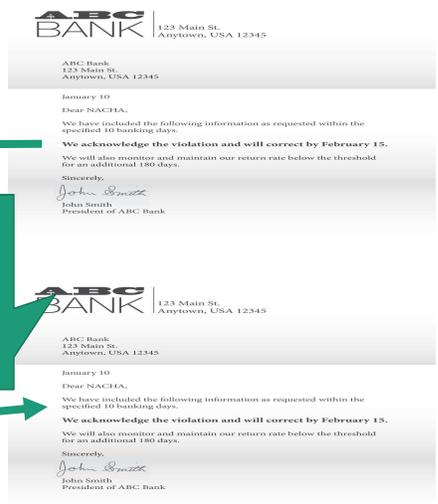
- Report of Possible Rules Violation
 - Submitted by Participating DFI or ACH Operator that is party to the transaction within 90 days of the occurrence of the violation
 - Paper submission or via Internet
 - Identifies parties involved in the dispute
 - Summarizes the facts of the dispute
 - Provides supporting documentation
 - Signed by an authorized representative of the financial institution submitting the report

Rules Enforcement

- Notice of Possible *ACH* Rules Violation



1. Acknowledgment of violation and intent to correct by specific date
2. Statement, along with supporting documentation, that an infraction has not occurred



10 Banking Days

2018 PaymentsFirst - All Rights Reserved

Rules Enforcement

- Fines and penalties



2018 PaymentsFirst - All Rights Reserved

Rules Enforcement

• ODFI Return Rate Reporting

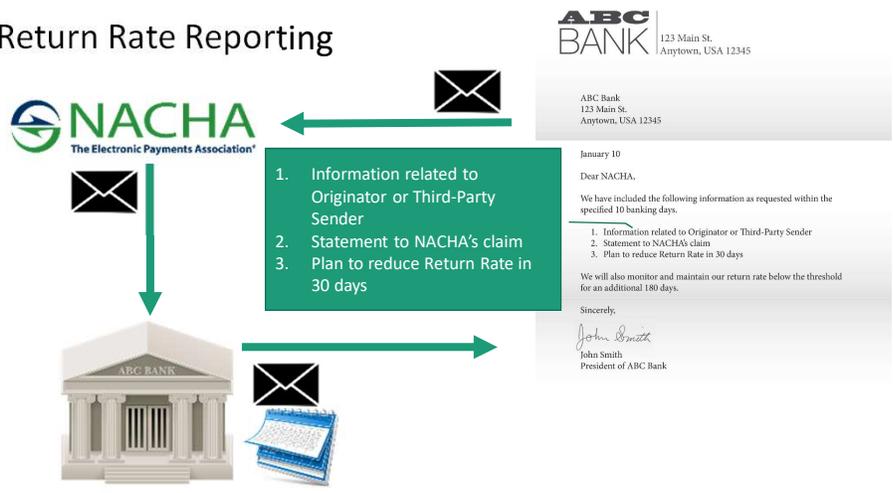


2018 PaymentsFirst - All Rights Reserved

21

Rules Enforcement

• ODFI Return Rate Reporting



10 Banking Days

Maintain Reduced Return Rate for 180 Days



2018 PaymentsFirst - All Rights Reserved

22

Rules Enforcement

- Administrative or Overall Return Rate Level exceeded
 - NACHA may initiate an inquiry to review the origination and business practices of the Originator or Third-Party Sender
 - Review may result in the ACH Rules Enforcement Panel determining if the situation warrants a recommendation to reduce the return rate

Rules Enforcement

- NACHA may initiate a rules enforcement proceeding for a Class 2 Rules Violation if the ODFI
 - Fails to provide a response to NACHA's written request within 10 banking days
 - Fails to reduce the Unauthorized Entry Return Rate, Administrative Return Rate and/or Overall Return Rate within 30 days
 - Successfully reduces the Unauthorized Entry Return Rate, Administrative Return Rate and/or Overall Return Rate, but fails to maintain it for 180 days

Rules Enforcement

- Rules enforcement proceeding for a Class 2 Rules Violation may be initiated if NACHA believes an ODFI has failed to register its Direct Access Debit Participant and Third-Party Sender registration status

Test Your Knowledge

Case #1 – The Facts

- Trainer's Credit Union sends an NOC to Backwoods Bank
- Backwoods Bank provides the information to its Originator, AAP Telecom Company
- AAP Telecom does not make the change before sending the live Entry
- This is the first time AAP Telecom failed to respond to an NOC

Case #1 – Test Your Knowledge

- Which process could be used to resolve this issue?
 - Compensation rules
 - Arbitration procedures
 - Rules enforcement
- What is the time frame to submit for the process chosen?
- Would any fine be assessed or transfer of money take place in this situation? Why or why not?

Case # 1 – Bonus Question

- If AAP Telecom failed to respond to another NOC within the next year, what could happen?

Case #2 – The Facts

- Backwoods Bank sent a \$2M credit transaction on behalf of AAP Telecom Company to an account at Trainer's Credit Union
- Trainer's Credit Union's new team member in operations thought the \$2M didn't need to be posted right away and held the amount in the General Ledger account
- The funds were held for three days until Backwoods Bank called Trainer's Credit Union

Case #2 – Test Your Knowledge

- Which process could be used to resolve this issue?
 - Compensation rules
 - Arbitration procedures
 - Rules enforcement
- What, if any, fee is associated with the chosen process?

Case # 2 – Bonus Question

- What are some factors included in calculating the amount suffered by a claimant under the compensation rules?

Case #3 – The Facts

- Trainer's Credit Union returns a \$35K CCD debit as R29 (Corporate Customer Advises Not Authorized) untimely
- Backwoods Banks' Originator obtained a proper authorization for the debit; thus, Backwoods Bank dishonors the return as R68 (Untimely Return)
- Trainer's Credit Union contests the dishonored return as R73 (Timely Original Return)

Case #3 – Test Your Knowledge

- Which process could be used to resolve this issue?
 - Compensation rules
 - Arbitration procedures
 - Rules enforcement
- What is the time frame to submit for the process chosen?
- What, if any, fee is associated with the chosen process?

Case # 3 – Bonus Questions

- What procedure would be followed? Please explain why.
- How many arbitrators will decide the case?
- What is the stipend amount?
- Is a hearing required to be held under this procedure?
- Is arbitration mandatory for both parties under this procedure?

Questions?

