
NACHA OPERATING RULES: RULES AUDIT ENHANCEMENT RULE

SUMMARY

Since the publication of the 2009 edition of the ACH Rules, NACHA's Voting Membership has approved one additional amendment to the NACHA Operating Rules (Rules). This amendment, which will become effective December 18, 2009, will refine and clarify existing Rules compliance audit requirements for all Participating DFIs, with specific provisions for ODFIs and RDFIs. These revisions will result in more effective annual audits, which will promote improved Rules compliance and higher quality transaction processing. Compliance with the revised audit provisions is not mandatory until the 2010 audit year; however, earlier adoption of these audit provisions is encouraged for all DFIs to mitigate areas of potential risk caused by non-compliance with the Rules. Details of the changes are provided below.

KEY COMPONENTS OF RULE AMENDMENT

All Participating DFIs

The Rules Audit Enhancement Rule ("Rule") incorporates a new section identifying key audit requirements applicable to all Participating DFIs, regardless of their particular roles as ODFIs or RDFIs. This section includes general audit requirements relating to record retention and reproduction requirements, audit obligations, data security requirements related to the use of unsecured electronic networks, and the payment of Network transaction fees (including those exchanged via direct send relationships).

The addition of this new section makes general audit obligations for all DFIs easier to locate and eliminates the need to include redundant language in separate sections addressing specific ODFI and RDFI responsibilities.

RDFIs

The Rule expands the scope of audit coverage for an RDFI by incorporating additional rules within the RDFI's compliance review. In addition to the existing RDFI audit requirements, this Rule incorporates a review of the RDFI's:

- Appropriate handling of XCK entries and entries received to non-transaction accounts;
- Compliance with rules governing the return of unauthorized debits to corporate accounts;
- Proper utilization of return reason codes;
- Timely return of un-posted credit entries and credit entries returned by the Receiver;
- Handling of ODFI requests for return or adjustments of erroneous entries; and
- Compliance with notice requirements for credit entries subject to UCC Article 4A.

ODFIs

This Rule broadens the current scope of an ODFI's audit coverage by incorporating additional rules within the ODFI's requirements for a compliance review. In addition to the existing ODFI audit requirements, this Rule incorporates a review of the ODFI's:

- Compliance with its obligation to accept and inform the Originator of return entries transmitted by the RDFI;
- Compliance with the rules governing dishonored return entries and handling of contested dishonored returns, including proper use of related return reason codes;
- Compliance with the rules governing the refused NOC process;
- Compliance with its obligation to obtain and provide the RDFI with copies of authorizations when requested to do so;
- Compliance with notice requirements for credit entries subject to UCC Article 4A;
- Proper use of the reversal process; and
- Compliance with the obligation to report information on each Originator or Third-Party Sender as requested by the National Association.

General Audit Requirements

This Rule also clarifies, within the Rules compliance audit language, that the failure of a DFI to provide NACHA with proof of completion of a Rules compliance audit is a violation of the NACHA Operating Rules and may be considered a Class 2 rule violation. The criteria defining a Class 2 rule violation within Appendix Eleven (Rules Enforcement) are expanded to specifically identify the failure to provide the results of an audit.

IMPACT TO PARTICIPANTS

All DFIs must complete an annual compliance audit to ensure they are complying with the Rules. Any DFIs that identify gaps or shortcomings in their current audit procedures will need to expand the scope of their Rules compliance audits to comply with these revised provisions.

TECHNICAL SUMMARY

Below is a summary of the impact of this rule change on the NACHA Operating Rules. Sections of the Rules that are affected by this amendment follow later within this document and reflect rule language as it will read upon implementation.

- Appendix Eight, Introduction – Modifies the introductory discussion on Rules compliance audits to provide additional guidance on the scope of the audit obligation and to incorporate references to additional subsections by which audit requirements are categorized; references a limited number of non-rule-related best practices for ACH operations.
- Appendix Eight, Section 8.1 (General Audit Requirements) – modifies this section to clarify that the failure to provide NACHA with the results of an audit may be considered a Class 2 rule violation subject to the rules governing such violations under the National System of Fines.

- Appendix Eight, Section 8.2 (Audit Requirements for All Participating DFIs) – removes certain general audit requirements from the audit section governing RDFIs and places them within this section specific to all DFIs; rearranges the location of some existing audit requirements for clarity or ease of use.
- Appendix Eight, Section 8.3 (Audit Requirements for RDFIs) – modifies this section to incorporate new rules sections within the scope of the RDFI’s Rules compliance audit; rearranges the location of some existing audit requirements for clarity or ease of use.
- Appendix Eight, Section 8.4 (Audit Requirements for ODFIs) – modifies this section to incorporate new rules sections within the scope of the ODFI’s Rules compliance audit; removes certain general audit requirements from the ODFI audit section and places them within a new section specific to all DFIs; rearranges the location of some existing audit requirements for clarity or ease of use.
- Appendix Eleven, Sections 11.1 (Scope), 11.3.1 (Initiation of a Rules Enforcement Proceeding), and 11.3.3 (Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association) – modifies these sections to clarify the circumstances under which NACHA would be eligible to initiate a Rules enforcement proceeding under the National System of Fines.
- Appendix Eleven, Section.11.3.7.4 (Class 2 Rules Violation) – expands the definition of a Class 2 rules violation to include a DFI’s failure to provide the National Association with proof of completion of a Rules compliance audit.

Implementation Date: This Rule will become effective on **December 18, 2009**, with Rules compliance audits conducted under the revised requirements to be completed no later than December 1, 2010. (Note: Earlier adoption of these expanded audit provisions is encouraged for all DFIs in an effort to minimize potential risk caused by the failure to comply with the Rules.)

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As approved February 17, 2009, effective December 18, 2009, the current Rules will be modified as follows for the Rules Audit Enhancement changes to the Rules:

Appendix Eight - Rule Compliance Audit Requirements

[As of December 18, 2009, the current Appendix Eight governing audit requirements will be removed from the Rules and replaced with the following Appendix Eight.]

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 a financial institution’s 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.

SECTION 8.1 General Audit Requirements

Each Participating DFI, and any 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. 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. The Participating DFI and its 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 and their Third-Party Service Providers shall conduct the following audit of ACH operations. 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 entries). (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:

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)

C. Verify that, subject to the RDFI's right of return, all types of ACH entries and prenotifications are accepted. Verify that the RDFI handles XCK entries and entries to non-transaction accounts appropriately. (Article Four, Subsection 4.1.3; Article Six, Subsection 6.1.3)

D. 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)

E. For Consumer Accounts, verify that the RDFI sends or makes available 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 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)

F. For all entries except RCK:

Verify that returned entries (including debit entries to a corporate account returned as unauthorized) 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)

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)

G. 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)

Verify that the RDFI uses Return Reason Codes R38 (Stop Payment on Source Document) and R52 (Stop Payment on Item) properly. 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.) (Article Eight, Subsections 8.7.3 and 8.7.4; Appendix Five)

K. 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)

L. Verify that 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)

M. Verify that, when requested to do so by the Receiver, the RDFI provides all payment-related information transmitted with CCD, CIE, 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)

SECTION 8.4 Audit Requirements for ODFIs

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, ODFIs and their Third-Party Service Providers shall conduct an audit of the following relating to the origination of ACH entries:

A. Verify that agreements have been made with all Originators (corporate customers) or Third-Party Senders that bind the Originator or Third-Party Sender to 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)

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)

C. 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, verify that the ODFI 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, 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 2.12.2.3)

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. 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)

I. 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)

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. \(Article Two, Subsections 2.4 and 2.5\)](#)

[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. \(Article Two, Section 2.18\)](#)

[O. Verify that the ODFI has kept Originators and Third-Party Senders informed of their obligations under these rules.\]](#)

Appendix Eleven - Rules Enforcement – Section 11.1 (Scope)

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. [\[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, \(2\) 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 the National Association, 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.

Appendix Eleven - Rules Enforcement – Subsection 11.3.1 (Initiation of a Rules Enforcement Proceeding)

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 a violation of unauthorized entries pursuant to section 11.2 (ODFI Reporting

Requirements) of this Appendix Eleven. [\[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 the National Association, 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).

Appendix Eleven - Rules Enforcement - Subsection 11.3.3 (Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association)

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 [\[Effective December 18, 2009, this bullet point will be removed from the Rules.\]](#)
- 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 2.18 (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 2.18 (ODFI Reporting Requirements);
 - (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 the National Association, as defined by these rules;\]](#)
- [\[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.

Appendix Eleven - Rules Enforcement – Subsection 11.3.7.4 (Class 2 Rules Violation)

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 2.18 (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 \(Rules Compliance Audit Requirements\);\]](#)

(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;

(6) the National Association believes that the violation causes excessive harm to one or more Participating DFIs or the ACH Network; or

(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.