

FIRST NATIONAL BANK CORPORATE TREASURY SERVICES

2009 NACHA RULES COMPLIANCE UPDATE FOR ACH ORIGINATORS

IAT – INTERNATIONAL ACH TRANSACTIONS - Effective September 18, 2009

On September 18, 2009, an amendment to the *NACHA Operating Rules* will become effective that has the potential to impact U.S. businesses that send or receive ACH payments. This amendment will require all payments funded internationally or sent to another country via the ACH Network to be identified as International ACH Transactions using a new Standard Entry Class (SEC) Code—**IAT**. The new Rule will also require that IAT payments include specific data elements defined by the Bank Secrecy Act's (BSA) "Travel Rule".

Classification of International ACH Transactions

The new rule will classify International ACH Transactions (IATs) by focusing on where the financial agency¹ that handles the payment transaction (movement of the funds) is located and not where any other party to the transaction (e.g., the Originator or Receiver) is located. Therefore, certain transactions that are currently sent as domestic **PPDs** or **CCDs** would be categorized as international transactions and must be sent as **IATs**.

Compliance with OFAC Requirements by Participants

NACHA is responding to a request from OFAC (Office of Foreign Asset Control) to be able to adequately identify transactions that are international in scope. The agreements that corporate originators sign with their financial institutions state that they will be in compliance with the *NACHA Operating Rules* and U.S. law. If a corporate originator does not comply and the transactions are identified or reported by other financial institutions, ACH Rules Violations can be filed against the Originating Depository Financial Institution (ODFI). If the problem is not resolved, fines may be levied for a rules violation.

U.S. corporations are also required to comply with OFAC obligations and the penalties for ignoring those obligations can be both criminal and civil and include both jail time and fines ranging between \$10,000 and \$10,000,000 per occurrence. Fines levied for OFAC violations are property of the U.S. government and levied by the OFAC, not the financial institutions.

Structuring the Formats to Comply with U.S. Law

The information currently included within the cross-border payment formats and other ACH records does not provide sufficient information for the financial institutions and regulators to readily identify all parties to an international transaction in order to comply with OFAC-administered U.S. sanctions policies. The new IAT format has added mandatory fields to carry the information needed for a regulatory review including the originator's name and identification number; complete address for both originator and receiver; ISO (International Organization for Standardization) destination country code; receiving bank name, identification, qualifier, and branch country code; receiver's name, account number and DFI (Depository Financial Institution) Identification Number; FX arrangements; payment amount; and Transaction Type Code (reason for payment).

¹ Financial agency means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds.

IAT Rules Framework

The definition of International ACH Transaction focuses on where the financial institution that handles the payment transaction (movement of the funds) is located and not where any other party to the transaction (e.g., the Originator or Receiver) is located. The rules define an International ACH Transaction as an ACH entry that is part of a payment transaction involving a financial agency's office that is ***not located in the territorial jurisdiction of the United States***. Specifically, an office of a financial agency is involved in the payment transaction if it:

- holds an account that is credited or debited as part of a payment transaction; or
- receives funds directly from a Person or makes payment directly to a Person as part of a payment transaction; or
- serves as an intermediary in the settlement of any part of a payment transaction.

A payment transaction is an instruction of a sender to a bank to pay, or to obtain payment of, or to cause another bank to pay or to obtain payment of, a fixed or determinate amount of money that is to be paid to, or obtained from, a receiver, **and** any and all settlements, accounting entries, or disbursements that are necessary or appropriate to carry out the instruction.

The message or payment instructions do not have to come at the same time as the funding of the transaction. Example – a SWIFT instruction message is received by a financial institution on Monday with instructions to create an ACH file for the company payroll. On Tuesday, the financial institution receives the funding for that SWIFT message from a foreign correspondent bank. The payroll items in the ACH file should be in the IAT format since the funding was received from a foreign financial institution.

When To Use The IAT Format:

The following are some questions that will need to be considered in determining if the IAT rule change will impact your company but do not represent an all-encompassing description of IAT scenarios:

- Does your company buy or sell to organizations or individuals outside the territorial jurisdiction of the United States?
- Does your company send payroll; pension; or benefit payments via the ACH Network to individuals that have permanent resident addresses outside the territorial jurisdiction of the United States?
- Does your company receive funds from a parent company or subsidiary in another country in order to specifically fund your U.S. ACH payments?
- Does your company collect funds through ACH to remit payments to individuals in other countries?
- Is your company a subsidiary of a multi-national company? Does your company have foreign subsidiaries?

If you answered yes to any of the preceding questions please contact your First National Corporate Treasury Services representative to assist you in understanding different payment scenarios and your options.

For additional information on IAT including copies of this mailing, complete IAT formats and payment scenarios, visit www.firstnational.com.