



**Administrative Simplification Under the
Patient Protection and Affordable Care Act:
Standards and Operating Rules Maintenance Process**

November 18, 2011

U.S. Department of Health & Human Services
National Committee on Vital and Health Statistics (NCVHS)
Subcommittee on Standards

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MAINTENANCE AND CHANGE REQUEST PROCESS FOR STANDARDS AND OPERATING RULES

Introduction

NACHA – The Electronic Payments Association is pleased to submit this testimony to the National Committee on Vital and Health Statistics’ (NCVHS) Subcommittee on Standards as it continues to address the administrative simplification provisions (Section 1104) of the *Patient Protection and Affordable Care Act* (PPACA). As requested, NACHA is providing testimony on the maintenance and change request process for standards and operating rules, specifically as they relate to NACHA’s CCD+ standard for electronic funds transfers.

The CCD+ is a national EFT standard used by all industries. Unlike other HIPAA standards, the CCD+ is adapted and used by industries of all types. While the process for the use of the standard and the standard itself can be adapted to incorporate healthcare specific requirements, the process for maintaining and changing the CCD+ standard needs to be mindful of all industries that use it, and not be specific to only the healthcare industry.

As a standards and rulemaking organization for the financial services industry, NACHA employs an open and inclusive rulemaking process that is national in perspective, considers all viewpoints, and responds to the needs of all industries that make electronic funds transfers (EFT) using the ACH Network. As the healthcare industry moves forward with the adoption of EFT, we have outlined specific steps to supplement our existing processes in order to facilitate dialogue between the financial services and the healthcare industries.

In its February 17, 2011 letter to Secretary Sebelius, the NCVHS Standards Subcommittee recommended that the NACHA CCD+ be identified as the healthcare EFT standard, in conformance with the *NACHA Operating Rules*. It is critical that any

maintenance and change request process for healthcare standards and operating rules be flexible, timely and adaptive to the needs of the industry, and not bound by rigid timeframes for changes and enhancements. NACHA recommends that NCVHS embrace the CCD+ as the mandated healthcare EFT standard, and acknowledge that the NACHA maintenance and change process, as supplemented for healthcare, is the existing and appropriate method for the consideration of changes to the CCD+ standard that is used by all industries, including healthcare, for EFT.

NACHA and the ACH Network

NACHA is the not-for-profit organization that develops and maintains the standards for EFT using the Automated Clearing House (ACH) payment system, and develops, maintains and amends the *NACHA Operating Rules* for implementing and using the ACH standards. As a standards and rulemaking organization in financial services, we have a 40-year history and extensive experience in developing, maintaining, and amending the ACH standards and the *NACHA Operating Rules*, which are used by all industries to conduct electronic funds transfers. In this capacity, I have previously testified on the benefits of private-sector rulemaking, NACHA's rulemaking process, and the applicability of the *NACHA Operating Rules* and the ACH standards to healthcare industry users of the ACH Network.¹ I encourage you to refer to those testimonies as you consider the maintenance and change request process for healthcare standards and operating rules.

The ACH Network is a safe, secure, electronic network for direct consumer, business, and government payments. Large and small financial institutions of all kinds jointly govern and use the ACH Network, facilitating billions of payments annually such as Direct Deposit and Direct Payment. As the ACH Network is a nation-wide electronic payments system, NACHA maintains a national perspective in supporting the business needs of all industries that use the ACH Network.

¹ Private-Sector Operating Rules: A Payments Network Perspective, Testimony by Janet O. Estep, July 20, 2010; Standards and Operating Rules for Electronic Funds Transfer (EFT) and Electronic Remittance Advice (ERA), Testimony by Janet O. Estep, December 3, 2010.

The ACH Network is governed by fair and equitable rules that create certainty and guide risk management for all participants. The *NACHA Operating Rules* establish the legal framework for the ACH Network, and all participating financial institutions are bound to comply with those *Rules*. Participating financial institutions provide warranties for all ACH transactions, backed by their capital, thereby guaranteeing the financial integrity of the payment system.

ACH transactions are a ubiquitous form of electronic payment that is already used by many health plans, including Medicare, to pay healthcare providers. The *NACHA Operating Rules*, and the transaction standards on which they are based, provide the backbone for this system. *The NACHA Operating Rules* establish the roles, rights and responsibilities of parties when conducting EFT via the ACH Network. This Committee has previously considered NACHA's EFT standards and recommended the adoption of the CCD+ standard for healthcare EFTs, in conformance with the *NACHA Operating Rules*.²

The NACHA Process for Requests to Change an EFT Standard or the NACHA Operating Rules

The *NACHA Operating Rules* are highly successful because they are amended through a deliberative and inclusive process similar to that used by Federal agencies under the *Administrative Procedures Act*. The process is transparent, and adaptive to the needs of the electronic payment marketplace, and considers all viewpoints. All participants in the ACH Network – commercial banks, community banks, credit unions, large corporations (e.g., health plans and hospital groups), small businesses (e.g., doctor and dentist practices), industry processors (healthcare clearinghouses) and vendors, and government agencies – have the opportunity to comment on proposed rule changes. When changes are required for the benefit of all ACH Network participants, there is a methodical, prescribed manner by which options are considered, impact is assessed, and the

² See Letter to the Secretary - Affordable Care Act (ACA), Administrative Simplification: Standard for Health Care Electronic Funds Transfers and Operating Rules for Electronic Funds Transfers and Health Care Payment and Remittance Advice; February 17, 2011; <http://www.ncvhs.hhs.gov/110217t2.pdf>.

viewpoints of all parties are heard. Due in part to the open, inclusive and transparent nature of the NACHA process, the U.S. Department of the Treasury and the Federal Reserve system incorporate the *NACHA Operating Rules* by reference in their own regulations for using the ACH Network.

All proposals to amend the *NACHA Operating Rules* are overseen by NACHA's Rules and Operations Committee (Committee), which is composed of a representative sample of financial institutions (by size, type, geography, etc.) as well as representatives of Regional Payments Associations, the ACH Network Operators, the Federal Reserve Board of Governors, and the U.S. Treasury Department. A rules proposal is assigned to a rules work group (itself composed of a similar representation) for research, impact evaluation, and development. A rules work group obtains additional input on a proposed rule from an Industry Support Group, composed of interested industry representatives. As a draft rule moves forward in the process, a Request for Comment is posted on the NACHA public web site and available to any interested party of any organization to provide input. NACHA accepts, reviews, and considers all comments and viewpoints on a rules proposal. Checks and balances throughout the process ensure that proposals have broad-based support.

NACHA also supports a comprehensive framework for delivering educational information to audiences across the U.S., consisting of offerings it delivers at the national level, grassroots education conducted by its 18 Regional Payment Associations, and collaborative efforts it undertakes with other strategic partners. Education is a key component of effective rulemaking as it ensures full implications are understood by financial institutions and their customers.

Supplemental Procedures for Changes Requests from the Healthcare Industry

NACHA's consideration and review of any requests to change an EFT standard or the *NACHA Operating Rules* needs to recognize the potential impact of the change on users across all industries. Therefore, we believe that we should not create and employ a separate process that is unique to the healthcare industry alone for considering such

requests. We do believe, however, that there are steps we can take to supplement our existing process to ensure that we provide the greatest ability for healthcare industry users of the NACHA EFT standards to provide their viewpoints on proposed changes. In this regard, the partnership that has been established between NACHA and CAQH CORE is very important.

NACHA's partnership with CAQH CORE and its appropriate Subgroups and Work Groups has established a forum that can assess changes requests for the NACHA EFT standards and the *NACHA Operating Rules*, in support of healthcare operating rules. NACHA is establishing formal touch points between CAQH CORE and its appropriate Subgroups and Work Groups and NACHA's existing process to ensure close review and communication between the financial services industry and the healthcare industry on requested enhancements to the healthcare EFT standard. In fact, the first such requests are included in the draft CORE EFT and ERA Reassociation Rule that this Committee is reviewing.

As an SDO for the healthcare EFT, NACHA will accept requests to modify the CCD+ standard from any party – directly from anyone in the healthcare industry, through CAQH CORE, or through a direct member of NACHA. By working with critical healthcare partners and by engaging healthcare entities in the NACHA process, we will seek input and guidance fluidly over time.

Responsiveness to Industry and Regulatory Requests for Enhancements to the *NACHA Operating Rules*

The NACHA rulemaking process allows the ACH Network to respond to and incorporate requests from any industry for enhancements to the *NACHA Operating Rules*. Over time, enhancements to the ACH standards and *NACHA Operating Rules* have been made to incorporate changes due to technology innovations, regulatory requirements and to support industry-specific requirements for standardized use of data elements in the CCD+ addenda record. Defined use of the CCD+ has been requested by other industries, for use in areas such as Auto Dealer Drafting, Child Support collections, submission of tax

payments, and individual enrollments in Social Security. Using NACHA's fluid and timely rulemaking process, each request is evaluated to ensure that development of the specific use will not have an adverse impact on other industries and users of the CCD+. In a similar fashion, NACHA will consider any request from the healthcare industry for changes to the healthcare EFT standard to ensure that changes can be supported by financial institutions who are responsible for ensuring the integrity of the payment system. The following are two examples that demonstrate the flexible and iterative processes followed by NACHA that allow for change to both standards and operating rules to accommodate industry requests.

NACHA developed a new non-monetary standard for the ACH Network – an ENR (automated enrollment entry) - to be used by a financial institution to request that an account holder be enrolled to receive ACH credits and debits from Federal Government Agencies. The ENR code was developed in direct response to unique needs of the U.S. Treasury and Social Security Administration. NACHA defined the ENR standard, including its specified format, as well as the operating rules that instructed banks and government as to its proper use. The format definition for ENR includes the standardized use of the Company Entry Description field – AUTOENROLL – and includes other format requirements for specific information (i.e., program identification and information contained in Receiving Company Name/ID Number field). The operating rules include requirements about processing of returns and responsibilities of government agencies receiving the enrollment entries. Subsequent to this initial use, the ENR standard has been adapted through the rule-making process to be utilized by other industries - companies that desire to have their customers enrolled in electronic billing services that can be enabled by banks. The companies enroll their customers via the ENR standard, and new rules were developed to define the roles and responsibilities of those companies and the banks to pass electronic information to enable secure electronic billing enrollment. Likewise, the ENR standard could even be considered and adapted as a way to securely enroll healthcare providers in EFT without paper processes.

The second example includes the CCD+ format itself, and how it has been adapted for use by a specific industry. The Family Support Act of 1988 made income withholding the primary method for collecting child support obligations. The CCD+ was designated as the standard to provide the employers with a means to send a child support payment withheld from the employees' wages directly to the child support enforcement entity (SDUs or State Disbursement Units). Because all employers can consistently use this format, all SDUs are required to accept employer-originated child support withholding payments via an ACH credit utilizing the NACHA CCD+ format. Although the format itself did not change, the way that it is utilized allowed for a unique industry adaptation, as specific information was identified to be used in specific fields of the standard. Paper checks and paperwork could be eliminated.

Incorporating the requirements of government regulators and changing technology into ACH standards and operating rules has also regularly occurred. In 2009, at the request of the Office of Foreign Asset Control (OFAC), NACHA introduced a new SEC code (IAT) developed to identify international payments and related information being processed through the ACH Network. NACHA also recently modified its TEL SEC code standard to support a recurring payment requested via a telephone, in response to changes in Regulation E. The Internet and the emergence of mobile payments has also resulted in new standards, as well as amendments to operating rules, at different times, as the environment and technology has changed

NACHA Operating Rules: Lessons Learned – Balance and Adaptability

As the payments landscape has grown and evolved, so too, have the *NACHA Operating Rules*. Following more than three decades of administering the *Rules*, time and again, NACHA has identified the themes of balance and adaptability as elements central to the evolution of the ACH Network, the EFT standards, and the *NACHA Operating Rules*.

Balance is essential in both the *Rules* themselves and the processes through which they are amended. Balancing is required to consider:

- Risk versus innovation;

- Speed of rulemaking versus broad inclusiveness;
- Cost versus benefits;
- Inclusiveness of, and impact on, all types and sizes of participants.

Operating rules allow for flexibility in balancing these trade-offs, especially the fine balance between risk and innovation where the assignment of roles, responsibilities, and recourse is essential.

NACHA's process has evolved over the years to adapt to the changing nature of ACH Network users, as well as to encourage faster adaptation of the Network to changes in the use of technology. Adaptability is critical on many fronts, including adapting to new technology, standards, participants, venues for dialogue and education, and regulatory requirements.

Rules take time to develop and inclusiveness takes time, but the *NACHA Operating Rules* and NACHA also have learned to be flexible in adapting to changing needs and technology over time. A rigid timeline or process for all rules and all standards may not provide for the most efficiency for the industry as it needs to adapt over time. In some instances, changes and updates to current standards, and even new standards, may not require changes to operating rules, or vice versa.

The *Rules* have changed iteratively through the years as requirements change and needs evolve. For example, Direct Deposit of payroll was the first ACH Network application. It is now used for many other types of payments, such as expense reimbursements and other types of commercial and government benefit payments.

As technology has changed and new opportunities arise more rapidly, NACHA has concurrently developed an ability to utilize its *Rules* to support "opt-in programs." This mechanism allows certain parties to use the strength of the *Rules* to support their transactions, while not obligating all Network participants. It also provides a mechanism to test new techniques and evaluate results, before utilizing it across the whole Network.

Over time, Network participants continue to change, and both NACHA and the *NACHA Operating Rules* have adapted to reflect new roles and responsibilities of different players in the Network.

Rules directly have evolved to become better aligned with other regulations by being more adaptive over time. This minimizes potential conflict between the *NACHA Operating Rules* and regulations such as the Federal Reserve's Regulation E, streamlining enforcement as well as efficiency in terms of how to implement. It is critical that any maintenance and change request process for healthcare standards and operating rules be flexible, timely and adaptive to the needs of the industry and not bound by arbitrary timeframes for change and enhancements.

NACHA as a Healthcare Standards Development Organization

While NACHA is an industry-neutral standards development organization, we will accommodate healthcare needs, as we have done with and for many other industries, while retaining the essence of our time-tested processes. NACHA has a defined, dependable process to accept requests for changes to its standards and rules on an ongoing basis. We commit to work with the healthcare industry to communicate these processes and adapt as we move through 2012, and into the future, working closely with CAQH CORE and others so that requests, recommendations, and changes are communicated and coordinated.

NACHA requests that NCVHS embrace the CCD+ as the mandated healthcare EFT standard, recognizing its wide-spread use today, and the efficiency it can afford the industry. NACHA also requests that NCVHS recognize the existing NACHA process as the appropriate and effective process for the maintenance and consideration of changes to the CCD+ standard as used by all industries, including healthcare. We recommend that NCVHS recognize that NACHA's existing process, as supplemented to accommodate healthcare industry users, is consistent with all aspects of the Guiding Principles of the Designated Standards Maintenance Organization (DSMO); and that healthcare industry

requests to modify the CCD+ standard can be accommodated through NACHA's existing process, as supplemented for healthcare, rather than through the formal DSMO process.

This process will ensure that rules and standards are iteratively developed, without redundant steps. Fluid and open processes, through Requests for Information and Requests for Comments, should be embraced in contrast to rigid timelines. Change and maintenance processes should also recognize that not all changes require testing, as adaptations to rules and standards may not include a technology change. An adaptive process, as we have outlined, with broad inclusiveness, allows for these subtleties.

Conclusion

As an organization and a payment network that has been developed collectively and used for nearly 40 years, NACHA has fine-tuned its rulemaking and voting processes to be inclusive, transparent, balanced, and adaptable. We have developed and implemented processes to engage thousands of entities in providing their viewpoints on proposed changes to the EFT standards and *NACHA Operating Rules*, as well as in dialogue and education. As a result, the ACH Network is widely known for being fair and equitable to all participants, while also adapting to technology and innovation.

NACHA is working in partnership with CAQH CORE to supplement the current NACHA process to ensure that we provide the greatest ability for healthcare industry users of the NACHA CCD+ standard to request modifications to the CCD+ standards and to provide their viewpoints on proposed changes. The existing NACHA process is consistent with the established Guiding Principles of a DSMO, providing an open, inclusive, and responsive process for requested enhancements to *NACHA Operating Rules* and standards from all ACH Network participants. We do not believe that a separate process, specific to the healthcare industry, would be in the best interest of the ACH Network or its participants. We therefore request that NCVHS recognize the existing NACHA process as the appropriate and effective maintenance and change request process for NACHA's CCD+ standard.

Appendix 1

Additional Examples of NACHA Standards and Operating Rule Changes

Adaption to Technology Changes

- Internet payments – Established an EFT standard (WEB) to enable and identify EFTs that have been authorized by a consumer via the Internet; modified the *NACHA Operating Rules* to establish security requirements for companies and financial institution using the standard
- Mobile payments – Modified the rules for use of the WEB standard to enable EFTs authorized by a consumer via a mobile device on a wireless network
- Online bill payments – Established an EFT standard (CIE) to support banks' bill payment services; currently used for online bill payments
- Person-to-person payments - NACHA is considering modifications to the CIE standard to adapt its use for consumer person-to-person payments initiated via the Internet or a mobile device on a wireless network

Responsiveness to Industry Requests

- Automotive industry - Standardized the use of remittance information in the addenda record of the CCD+ standard to facilitate automation of auto dealer inventory financing
- Tax payments – Standardized the use of remittance information in the addenda record of the CCD+ standard; modifications to the standard developed in cooperation with the Federation of Tax Administrators and the Committee on State Taxation to provide a standard format for businesses to electronically remit tax payment information with tax payments to state taxing authorities via the ACH using the NACHA CCD+ standard. The convention, approved in 1990, has since been adopted by county, city and municipal taxing authorities for their electronic tax programs.
- Third-Party Tax Payments (TPP) – NACHA is reviewing a standardized use of remittance information in the addenda record of the CCD+ standard to

transmitting data for third-party payments to a state taxing authority, where there is a need to identify both the third-party payer as well as the taxpayer on whose behalf the payment is being made. Such third party payments can be employment taxes paid by payroll services providers on behalf of employers, or payments from employers in response to tax agency orders to garnish employee wages for tax liability. State revenue agencies process large numbers of paper check payments (between 15,000 and 20,000 a month for a medium-sized state) being remitted by third party payers (employers, payroll service companies, financial institutions, etc.) on behalf of delinquent taxpayers. Adaption of the CCD+ standard will result in administrative simplification and cost savings for state taxing authorities.

- Death Notification by Social Security – NACHA established a standard (DNE) for the U.S. Treasury and the Social Security Administration to notify a financial institution that a customer who is receiving Federal Government benefits has died. A financial institution that receives such a notification has the opportunity to return excess benefit payments to the Federal government.

Responsiveness to Regulatory Changes

- Child Support - The *Family Support Act of 1988* made income-withholding the primary method for collecting child support obligations and mandated the method by which income-withholding is transmitted from the employer to the child support enforcement entities (the centralized collection sites for receipt of child support are currently referred to as SDUs). The Child Support Application Banking Convention is a standardized use of the remittance information in the addenda record of the CCD+ standard that provides an employer with an electronic method for sending child support obligations withheld from employees' wages to the State Disbursement Units (SDU) by means of ACH credit payments. These payments transfer the funds and payment information electronically, thereby offering the employer an alternative to issuing a check with a detailed paper listing of the employees whose wages were garnished. The convention forms the basis for remitting child support payments together with remittance

detail about the payments using the NACHA CCD+ standard. All SDUs were required to be capable of accepting employer-originated child support withholding payments sent in the NACHA CCD+ standard by September 30, 1997. This resulted in administrative simplification and significant cost savings for SDUs.

- International Payments – NACHA established an EFT standard (IAT) and operating rules detailing its use in response to a request from the U.S. Treasury’s Office of Foreign Asset Control. Use of the standard identifies payments flowing through the U.S. ACH Network that were either originated in a foreign country or bound for a receiver in a foreign country that can be screened against OFAC’s list of blocked parties.
- Regulation E changes – NACHA has made numerous changes to the *NACHA Operating Rules* and its EFT standards to ensure that use of EFTs via the ACH Network are aligned with amendments and updates to the Federal Reserve’s Regulation E (the primary banking regulation that provides consumer protection for EFTs). Examples include changes to a standard to distinguish between a single EFT and multiple, preauthorized EFTs, and changes to operating rules regarding consumers’ stop payment rights on EFTs.