New ACH Stop Payment and Written Statement of Unauthorized Debit Requirements

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Agenda

- ACH Stop Payment Requirements – Regulation E
- ACH Stop Payment Rule Modification – NACHA Operating Rules
- ACH Stop Payment Form
- NACHA Rule Amendment Regarding “Unauthorized Transaction” Documentation
- Written Statement of Unauthorized Debit Form
- Stop Payment and Unauthorized Transactions: Frequently Asked Questions
- Q & A
ACH Stop Payment Requirements – Regulation E

- Official Staff Commentary to Regulation E, 205.10(c) Consumer’s Right to Stop Payment: *

  - 1. Stop-payment order. The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

* Effective January 1, 2007
Previous NACHA Rule: ACH Stop Payment

- An ACH stop-payment order applies to a single ACH debit
- The stop-payment order will remain in effect until the earliest of the following occur:
  - The debit entry has been stopped
  - The Receiver withdraws the stop-payment order
  - Six months elapses from the date of placement of the stop-payment order
Because the Federal Reserve Board’s Staff Interpretation has changed over time, there has been a divergence between the *Rules* and Reg E over the intent of, and processing requirements for, stop payment orders on ACH debits.
New NACHA Rule: ACH Stop Payment *

Key Provisions:

- **Eliminates** the six-month time period after which a stop-payment order lapses

- When the stop-payment order applies to more than one debit entry, the order remains in effect until **all such entries have been stopped**

- Permits the RDFI to require, in cases where the Receiver desires to block **all future payments** related to a specific authorization, that the Receiver confirm in writing that the Receiver revoked authorization with the Originator

* Effective March 19, 2010. 2010 NACHA Operating Rules, “Revisions” section, pp 6-7; Page OR 30; Page OG 111.
New NACHA Rule: ACH Stop Payment *

Key Impacts to RDFIs:

- Costs of compliance borne by RDFI:
  - Modification of existing documentation
  - Modification of current stop-payment system platform(s)
  - Staff education
  - Consumer education
ACH Stop Payment: Documentation Considerations

- Transaction information
- Consumer notice requirements:
  - Three banking days....when?
  - Consumer liability to provide correct information
  - “Reasonable opportunity”....when?
- Possible consumer responses:
  - Stop all future payments indefinitely
  - Stop the next payment only
  - Stop a series of payments
ACH Stop Payment: Documentation Considerations

- Fees
- No fraudulent intent
- Signature / Date
- FI section
Stop Payments Affecting Non-Consumer Accounts

- RDFI may require a “reasonable opportunity” to act on the request
- Verbal stop payment orders may be confirmed in writing within 14 days
- Effective for 6 months, unless renewed in writing
- Not affected by any provisions or Regulation E
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Definition of an unauthorized entry
- Modifications to written statements
- Minimum information requirements
- Timeframes associated with the Written Statement Process
- Retention requirement for written statement
- Use of Return Code R39
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Definition of an unauthorized entry:
  - Revises current definition to an amount “different” than that authorized by the Receiver
  - Also applies to a debit based on an authorization that is not “clear or is otherwise invalid under applicable law”
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Modifications to Written Statements:
  - Eliminates requirement that statement be made under “penalty of perjury”
  - Renames requirement “Written Statement of Unauthorized Debit”
  - Avoids triggering any jurisdiction’s requirement that the document be notarized
  - RDFIs may continue to require such documents to be notarized at their discretion
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Minimum Information Requirements:
  - Receiver’s printed name and signature
  - Receiver’s account number
  - Party debiting the account (payee), as identified to the Receiver
  - Posting date of the entry
  - Dollar amount of the entry
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Minimum Information Requirements:
  - Reason for return
  - Signature date
  - Receiver assertion that the Written Statement is true and correct
  - Receiver assertion that the Receiver is an authorized signer or has authority to act on the account
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Additional Provisions:
  
  - The Written Statement must be signed and dated on or after the Settlement Date of the entry(ies) for which recredit is being requested.

  - More than one unauthorized debit entry from a specific Originator may be documented on a Written Statement, provided that all the transaction details as required by the rule are provided for each transaction(s) for which the Receiver is seeking recredit.
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Timeframes Associated with the Written Statement Process:
  - **Copy of Written Statement:** reduces timeframe to produce copy from 60 days to 10 banking days following ODFIs written request
  - **Retention Requirements:** one year from the Settlement Date of the adjustment entry
NACHA Rule Amendment: Written Statement of Unauthorized Debit

- Use of Return Code R39:
  - Expands current use of R39 code (Improper Source Document)
  - May now be used to return an ARC, BOC or POP when the source document has been presented for payment as well as the check conversion entry
  - Will not require RDFI to obtain a Written Statement from the Receiver in this situation
  - Standard return time frame still applies
  - Potential impact to Originators
NACHA Rule Amendment:
Written Statement of Unauthorized Debit

WSUD Form:
- Account/Transaction Information
- Statement
- Signature
WSUD Form

- Account / Transaction Information:
  - Account Holder Name
  - Account Number
  - Amount of Debit
  - Date Debit Posted to Account
  - Party Debiting the Account
WSUD Form

- Statement:
  - Account holder gives statement as to why he/she believes the transaction(s) in question are not authorized:
    - Party not authorized to debit the account
    - Authorization previously revoked on PPD, IAT or recurring WEB transaction(s)
    - Account debited prior to authorized date
    - Account debited for amount different than authorized
    - Check improperly processed electronically
    - Other (specify)
WSUD Form

- Signature:
  - Must confirm status as “authorized signer” on account
  - Debit not originated with fraudulent intent
  - Attest to the accuracy and truth of the statement
Stop Payments: Frequently Asked Questions

Question:

I am still unsure as to when we are allowed to return an ACH transaction as a stop payment. Isn’t the stop payment return code only for ACH transactions that have been converted from a check?
Stop Payments: Frequently Asked Questions

Answer:

A stop payment order is intended to prevent an ACH entry from posting to the Receiver’s account. It is a proactive measure used by the RDFI to prevent its customer’s account from being debited. A stop payment order can be placed on any ACH transaction, regardless of SEC Code.

By contrast, a return for “unauthorized” or “authorization revoked” is a reactive measure used to return an entry that has previously posted to the Receiver’s account.
Stop Payments: Frequently Asked Questions

Question:

Can we ask the customer at the time of the stop payment request whether the stop is for a one time item or based on a revocation where there could be multiple future items? And, if so, could that be the determinant as to whether we have to put the stop payment on as indefinite? How do we document the customer’s response?
Stop Payments: Frequently Asked Questions

Answer:

Yes. An RDFI must communicate with its customer in order to have a clear understanding about the consumer’s intent with regard to stopping one, multiple, or all future payments. The answer to this question will help determine the duration of the stop payment order. The rules do not address the documentation of a stop payment order. The manner in which an RDFI obtains this instruction from its customers and the length of time such documentation is retained is a business decision to be made by each RDFI.
Stop Payments: Frequently Asked Questions

Question:

The rule states the RDFI may require the consumer to confirm in writing that the consumer has revoked the authorization with the Originator before accepting a stop payment order for all future debits. Does this mean the RDFI may require a copy of the revocation and, if it does not receive it, that the RDFI may refuse the consumer’s request to stop payment for future debits? Do the FRB regulators agree with that interpretation?
Stop Payments: Frequently Asked Questions

Answer:

The RDFI should ask its customer if the intent is to stop one single payment or all future payments. If the intent is to stop all future payments, the RDFI may require the customer to confirm in writing that he has revoked the authorization with the Originator. If the RFDI does not receive this confirmation within 14 days, it may honor subsequent debits to the account. This is consistent with the Federal Reserve Board’s Official Staff Interpretation on Regulation E.
Stop Payments: Frequently Asked Questions

Question:

If we begin to request/require copies of the account holder revocation, do we open our institution up to any additional liability regarding the account holder’s assertion?
Stop Payments: Frequently Asked Questions

Answer:

No. Both Regulation E and the NACHA Operating Rules permit an RDFI to request written confirmation from the consumer that he has revoked authorization with the Originator. By obtaining this documentation, it should help an RDFI comply with its obligation to prevent future entries from posting by verifying that the consumer has instructed that such transactions be stopped at their source.
Stop Payments: Frequently Asked Questions

Question:

If the consumer says she revoked the authorization and she wants the RDFI to stop all future payments, how should the RDFI return any debits that come in?
Stop Payments: Frequently Asked Questions

Answer:

The RDFI must prevent any future payments from posting to the consumer’s account and return such entries using R08.
Stop Payments: Frequently Asked Questions

Question:

If a stop payment is placed for a recurring ACH debit, will that stop payment order be in effect forever?
Stop Payments: Frequently Asked Questions

Answer:

If the consumer wishes to stop all future transactions, the FI must prevent all such transactions from posting to the consumer’s account. The stop order must remain in effect for as long as entries covered by the stop order could be received by the RDFI. To ensure that future entries are not originated, the FI should ensure that its customer has revoked authorization directly with the Originator, and it may request the consumer to provide written confirmation of such action. If written confirmation is requested by the FYI but not provided, the FI may permit future entries to post to the account.
Question:

If a client has a Regulation E claim open for 3 unauthorized items and two are from the same Originator, would the client have to fill out one WSUD for the two items with the same Originator, and another one for the other Originator?
Written Statements: Frequently Asked Questions

Answer:

Yes, multiple entries from the same Originator may be included on the same Written Statement provided that all required information is included for each entry. You may not include entries from different Originators on the same Written Statement.
Written Statements: Frequently Asked Questions

Question:

We were told that as long as our current WSUPP contained the minimum information required we could continue to utilize it. Is there a sunset date for financial institutions to convert their documentation to contain “Written Statement of Unauthorized Debit?”
Written Statements: Frequently Asked Questions

Answer:

All Written Statements must contain the minimum required information no later than March 19, 2010. If your current WSUPP contains the required minimum information, you may continue to use that version of the document, regardless of the title of the document.
Written Statements: Frequently Asked Questions

Question:

If a corporate account receives a consumer entry and the RDFI returns it as unauthorized, does the RDFI have to obtain a Written Statement?
Written Statements: Frequently Asked Questions

Answer:

If the RDFI returns the entry within the 2 day return time frame using R29, a Written Statement is not required. If the RDFI uses the extended return time associated with consumer entries (R07 or R10), the RDFI must first have obtained a completed and signed Written Statement.
Written Statements: Frequently Asked Questions

Question:

What are the best practices for handling returns beyond 60 days?
Answer:

Because an untimely return is likely to be dishonored by the ODFI, the RDFI should contact the ODFI to discuss the problem related to the unauthorized entry and determine the manner in which the ODFI will make the RDFI whole for an unauthorized debit entry.
Conclusions…

- Changes implemented March 19, 2010
- Review current documentation for stop payments, WSUPP
- Ensure language is modified to meet rule and Regulation requirements
- Contact your RPA for sample forms
- Get blessing from legal!
Resources

- 2010 ACH Operating Rules
- Regulation E, Official Staff Commentary: 205.10(c), Consumer’s Right to Stop Payment
- Operating Guidelines Sample WSUD
- RPA Sample Stop Payment Forms
Contact Information

Contact your local RPA!
THANK YOU!

PLEASE –
Complete your evaluation form!!