

public health continues to be protected from the hazards of radionuclides by compliance with health based standards. This information is required for those facilities meeting the definition of each Subpart. EPA's compliance monitoring activities vary widely. EPA could issue a letter requesting information about compliance or could conduct a full-scale investigation, including on site inspections. The information required to be submitted is not confidential in nature.

*Respondents/affected entities:* The NAICS Codes of facilities associated with the activity of the respondents are: (1) Elemental Phosphorous 325188, (2) Phosphogypsum Stacks 212392, (3) Underground Uranium Mines 212291, and (4) Uranium Mill Tailings 212291.

*Respondent's obligation to respond:* Mandatory.

*Estimated number of respondents:* 20 (total).

*Frequency of response:* Initially (Once), Annually, Random (Occasionally)

*Total estimated burden:* 3,000 hours (per year). Burden is defined at 5 CFR 1320.03(b)

*Total estimated cost:* \$500,000, which includes \$300,000 in annualized capital and O&M costs.

**Courtney Kerwin,**

*Acting Director, Collection Strategies Division.*

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**BILLING CODE 6560-50-P**

## FEDERAL RESERVE SYSTEM

[Docket No. OP-1515]

### Enhancements to Federal Reserve Bank Same-Day ACH Service

**SUMMARY:** The Board of Governors (Board) has approved enhancements to the Federal Reserve Banks' (Reserve Banks) same-day automated clearing house (ACH) service. The enhancements require receiving depository financial institutions (RDFIs) to participate in the service and originating depository financial institutions (ODFIs) to pay a fee to RDFIs for each same-day ACH forward transaction. The enhancements will be adopted by incorporation of NACHA's amended operating rules into Operating Circular 4, governing the Reserve Banks' ACH services.

**DATES:** Effective September 23, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ian C.B. Spear, Senior Financial Services Analyst (202/452-3959); or Jessica Stahl, Economist (202/452-6452),

Division of Reserve Bank Operations and Payment Systems; Evan H. Winerman, Senior Attorney (202/872-7578), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263-4869.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 27, 2015, the Board requested comment on proposed enhancements to the Reserve Banks' FedACH® SameDay Service (FedACH SameDay Service).<sup>1</sup> The proposed enhancements were intended to align the existing FedACH SameDay Service with amendments to NACHA's Operating Rules and Guidelines that were approved by NACHA membership on May 19, 2015 (amended operating rules).<sup>2</sup>

The ACH network serves as a ubiquitous, nationwide mechanism for processing batch-based credit and debit transfers electronically. The private sector and the Federal Reserve jointly developed the ACH network as an electronic alternative to checks, the growth of which in the late 1960s and early 1970s was creating operational and cost burdens. Currently, the ACH network consists of two network operators: The Reserve Banks, through FedACH, and The Clearing House (TCH), through the Electronic Payments Network (EPN). Both operators provide services to enable ODFIs to originate and RDFIs to receive ACH transactions. The Reserve Banks and TCH work together to exchange inter-operator ACH payments in which the ODFI and RFDI are served by different operators.

The ACH network is governed by the rules of the ACH operators, which generally incorporate the NACHA Operating Rules and Guidelines adopted by NACHA's members.<sup>3</sup> As an ACH operator, the Reserve Banks, through Operating Circular 4, incorporate NACHA's Operating Rules and Guidelines as rules that govern clearing and settlement of commercial ACH items by the Reserve Banks, except for those provisions specifically excluded in the Operating Circular.<sup>4</sup> The Reserve Banks' Operating Circular 4 does not govern ACH transactions conducted through EPN.

<sup>1</sup> 80 FR 30246 (May 27, 2015).

<sup>2</sup> The amendments become effective in three phases, beginning with same-day credits in September 2016, same-day debits in 2017, and faster funds availability in March 2018. Next-day settlement will also remain available.

<sup>3</sup> NACHA's membership consists of insured financial institutions and regional payment associations.

<sup>4</sup> Operating Circular 4, Section 1.4, [https://www.frbservices.org/files/regulations/pdf/operating\\_circular\\_4\\_11042013.pdf](https://www.frbservices.org/files/regulations/pdf/operating_circular_4_11042013.pdf).

The Reserve Banks' current FedACH SameDay Service is an optional service that allows ODFI participants to originate same-day payments to all RFDI participants that agree to accept such payments.<sup>5</sup> The Reserve Banks began offering the service in 2010 to address growing market demand for intraday ACH processing and settlement. In the five years since its introduction, the FedACH SameDay Service has experienced limited adoption; 78 depository institutions (less than 1 percent of FedACH customers) are currently using the service. A number of factors may account for this low adoption rate. RDFIs typically need to upgrade internal processing capabilities to post same-day transactions. Although ODFIs may be able to realize value from the service through enhanced ACH product offerings, such as emergency bill pay, these services may be unappealing to originators because of low RFDI participation and corresponding limited receiver reach. The current FedACH SameDay Service does not have an interbank fee.

Two aspects of NACHA's amended operating rules differ materially from the Reserve Banks' current FedACH SameDay Service. First, under NACHA's amended operating rules, receipt of same-day ACH transactions is mandatory and RDFIs must make funds available from same-day ACH credits to their depositors by 5:00 p.m.<sup>6</sup> Second, NACHA's amended operating rules establish an interbank fee, paid by ODFIs to RDFIs for each forward same-day transaction.<sup>7</sup> As described in greater detail below, NACHA designed the interbank fee, initially 5.2 cents per forward transaction, to allow RDFIs to offset costs associated with the up-front investments and ongoing operating costs necessary for accepting, posting, and making funds available from same-day transactions. The amended operating rules provide that the interbank fee will be reduced if actual same-day transaction volume exceeds original projections by more than 25 percent during regularly required review periods.<sup>8</sup> Ten years after the final phase

<sup>5</sup> As part of the service, the Reserve Banks charge participating ODFIs a per-item surcharge on the normal ACH processing fee and provide RDFIs a discount on the normal ACH processing fee for receipt of forward items.

<sup>6</sup> RDFIs' local time.

<sup>7</sup> The amended operating rules refer to the interbank fee as the "Same Day Entry Fee." Only forward same-day transactions originated by or through the ODFI are subject to the fee; same-day returns will also be available but are not subject to the interbank fee.

<sup>8</sup> Same-day ACH volume will be reviewed five years and eight years after the final phase of implementation is effective.

of implementation is effective, and every ten years thereafter, NACHA will reevaluate the interbank fee.<sup>9</sup> Under NACHA's amended operating rules the interbank fee may not be increased from its initial level of 5.2 cents per forward transaction.

These differences require enhancements to the Reserve Banks' existing FedACH SameDay Service that may have a significant longer-run effect on the nation's payment system.<sup>10</sup> Therefore, the Board requested comment on the following:

- Making receipt of same-day ACH transactions mandatory for all RDFIs. If commenters believed that participation by RDFIs should not be mandatory, the Board requested comment on why the Reserve Banks' same-day ACH service should remain optional and whether there are non-mandatory alternatives to achieving ubiquity.

- Whether the interbank fee included in NACHA's amended operating rules equitably reapportions the initial implementation costs and ongoing operating costs between ODFIs and RDFIs.

## II. Summary of Comments and Analysis

The Board received forty comments in response to its request. Comments were submitted by depository institutions, depository institution trade associations, national and regional payments associations, associations representing end users (consumers and businesses) and third-party payment processors, a private-sector ACH operator, and an individual. Twenty-two commenters stated that receipt of same-day ACH transactions should be mandatory and that the interbank fee appropriately reapportions costs between ODFIs and RDFIs. Three commenters generally supported same-day ACH services but did not specifically address mandatory receipt or the equity of the interbank fee. Fifteen commenters expressed some

concern with one or both of the topics on which the Board requested comment.

### A. Mandatory Participation of RDFIs

Thirty-seven commenters addressed mandatory receipt of same-day ACH transactions. Twenty-nine commenters believed that mandatory receipt is critical to the success of a same-day ACH service. These commenters, including seven small depository institutions or associations representing such institutions, generally agreed that mandating receipt is necessary to achieve a ubiquitous same-day ACH service that provides value to end users and depository institutions and achieves the associated public benefits that come from the enhanced efficiency of the ACH network. Making receipt of same-day transactions optional, they argue, would severely limit the benefits of any same-day ACH service. One commenter (one letter representing two merchant associations), which agreed that mandatory receipt is necessary to achieve a ubiquitous same-day ACH service, requested that the Board abandon same-day ACH services to develop real-time ACH processing.

Eight commenters, all credit unions or credit union associations, expressed concern that mandatory receipt of same-day ACH transactions would be overly burdensome on smaller depository institutions. These commenters indicated that technical and operational changes are necessary to receive same-day ACH transactions, and that small institutions will be disproportionately affected because they would be unable to adequately offset the associated costs of receiving such transactions because of their lower same-day ACH volume. Only three of these commenters suggested alternatives: Two commenters suggested that the Board exempt smaller depository institutions from any mandatory receipt requirements, and one commenter suggested limiting same-day ACH transactions to a single morning submission and afternoon settlement deadline to reduce the burden on smaller depository institutions.<sup>11</sup> The commenters that supported making receipt mandatory included seven small depository institutions or associations representing such institutions, including a

community-bank trade group. These commenters supported mandatory receipt even in light of the associated costs.

The Board believes that the benefits of same-day ACH service outweigh the costs institutions would incur to implement such a service. Same-day ACH capability will facilitate the use of the ACH network for certain time-critical payments, accelerate final settlement, and improve funds availability to payment recipients.<sup>12</sup> The Board believes that these capabilities will in turn provide a more efficient electronic payment option for person-to-person payments, expedited bill payments, same-day payroll payments, and other types of transactions.<sup>13</sup> In light of the widespread industry support for a same-day ACH service with an interbank fee, as evidenced by the approval of the NACHA amended operating rules, the Board believes that the costs incurred to implement such a service are outweighed by the enhanced efficiency of the ACH network and the broader U.S. payment system.

The Board also believes that ubiquity is necessary to achieve these benefits. As with existing next-day ACH services, same-day ACH will be most efficient if originators can be certain that same-day ACH transactions will reach any banked receiver. If the same-day ACH service lacks this ubiquity, originators would be able to use the service to reach only a subset of their intended receivers, substantially reducing the attractiveness of the service. The Board believes, and commenters supporting mandatory receipt agreed, that the limited adoption of the Reserve Banks' current FedACH SameDay Service demonstrates an optional service cannot achieve the ubiquity necessary to establish a successful same-day ACH service. The Board agrees with the majority of commenters that mandating receipt of same-day ACH transactions is the only practical method to achieve that necessary ubiquity and the corresponding benefits. Moreover, the interbank fee, discussed below, is designed to address the concerns of RDFIs about same-day ACH implementation and operating costs.

Although the Board acknowledges the concerns raised by some commenters

<sup>9</sup> NACHA's reevaluation will not include implementation costs recovered through payment of the interbank fee during the preceding period, and will be based on the average costs incurred by RDFIs, same-day ACH volumes, projected future developments, and the extent to which the fee satisfied RDFI costs.

<sup>10</sup> The amended operating rules contain other elements that would require modifications to the Reserve Banks' current FedACH SameDay Service. The Board believes these changes are operational in nature and will not have significant longer-run effects on the nation's payment system. These include updated submission and settlement windows (an estimated morning submission deadline at 10:30 a.m. ET with settlement occurring at 1:00 p.m. ET and an estimated afternoon submission deadline at 3:00 p.m. ET with settlement occurring at 5:00 p.m. ET). International ACH transactions and transactions above \$25,000 are not eligible for the same-day service.

<sup>11</sup> Unlike the Board's current FedACH SameDay Service, NACHA estimates that same-day ACH services under the amended operating rules will include two updated submission and settlement windows (an estimated morning submission deadline at 10:30 a.m. ET with settlement occurring at 1:00 p.m. and an estimated afternoon submission deadline at 3:00 p.m. ET with settlement occurring at 5:00 p.m.). However, exact schedules and timing will be determined by each ACH operator and are not set by the amended operating rules.

<sup>12</sup> One commenter that supported same-day ACH noted that payments processed through the check system may clear and settle faster than some ACH transactions today.

<sup>13</sup> Same-day ACH may facilitate certain transactions for which next-day ACH is not feasible. For example, companies with limited windows for processing payroll payments, such as payments to hourly employees, may be able to process transactions via same-day ACH that otherwise would be conducted using checks or prepaid cards.

regarding the burden of mandatory receipt of same-day ACH transactions for small depository institutions, the Board does not believe that any of the commenters provided a viable alternative for achieving ubiquity without such burdens. The Board believes that exempting small institutions would undermine the ubiquity—and therefore the utility—of the service. Finally, the Board believes that limiting same-day ACH transactions to a single morning submission and afternoon settlement deadline would reduce the utility of a same-day ACH service, particularly for West Coast depository institutions.

The Board believes that a ubiquitous same-day ACH service will offer considerable pro-competitive benefits. Ubiquitous same-day ACH service could create a new mechanism to compete with payment methods other than ACH, and may do so at a lower cost. As stated above, for example, same-day ACH capability will facilitate the use of the ACH network for certain time-critical payments, accelerate final settlement, and improve funds availability to payment recipients. The Board believes that these capabilities will in turn provide a more efficient electronic payment option for person-to-person payments, expedited bill payments, same-day payroll payments, and other types of transactions.

The Board also does not believe that same-day ACH capabilities should be abandoned to pursue real-time ACH payments as suggested by the merchant associations' letter, but rather believes that both services would be complementary. As outlined in the Federal Reserve's *Strategies for Improving the U.S. Payment System* paper (Strategies Paper), the Federal Reserve recently convened two task forces—faster payments and secure payments—where private-sector participants can collaborate to create approaches that will serve the public.<sup>14</sup> The faster payments task force, with input from the secure payments task force, will identify and evaluate alternative approaches for implementing safe, ubiquitous, faster payments capabilities in the United States. The Board believes that these efforts are the most appropriate channels to further consider real-time ACH capabilities.

For these reasons, the Board has approved enhancements to the Reserve Banks' existing FedACH SameDay Service that make receipt of forward

same-day ACH transactions mandatory for all RDFIs.

#### B. Interbank Fee

Thirty-four commenters addressed whether the interbank fee included in NACHA's amended operating rules equitably reapportions the initial implementation costs and ongoing operating costs between ODFIs and RDFIs.<sup>15</sup> Thirty-two commenters supported an interbank fee as an appropriate method for allocating costs between parties.

Twenty-one commenters argued that an interbank fee of 5.2 cents is appropriate.<sup>16</sup> These commenters generally stated that the interbank fee is necessary for achieving a ubiquitous same-day ACH service; without an interbank fee these commenters concluded that many RDFIs would have opposed NACHA's amended operating rules. Several commenters cited the failure of NACHA's Expedited Processing and Settlement (EPS) proposal in 2011 as evidence that a same-day ACH service lacking an interbank fee could not succeed.<sup>17</sup>

Ten commenters (nine credit unions or credit union associations and one bank holding company) supported an interbank fee but argued that the 5.2 cent fee is too low to allow smaller RDFIs to recover costs in a reasonable amount of time, particularly small RDFIs with limited same-day ACH volume. Two of these commenters suggested that the Board create a tiered fee structure instead of a flat fee, allowing smaller RDFIs to receive higher fees.

<sup>15</sup> One additional commenter stated it was unable to assess the equity of the interbank fee due to variables that it believed were not adequately addressed or evaluated by NACHA's calculation, including the potential for higher initial implementation costs and lower incremental costs. One payments association commenter that did not specifically address the equity of the interbank fee stated that its membership was split as to whether to support NACHA's amended operating rules without the fee. One additional financial institution commenter did not address the equity of the fee or express clear support but suggested that the fee would not sufficiently address extended staffing hours necessary to meet same-day posting times.

<sup>16</sup> One commenter that supported an interbank fee as an appropriate method for allocating costs between parties did not specifically address whether the current interbank fee amount of 5.2 cents was appropriate.

<sup>17</sup> The initial proposal to create a ubiquitous, same-day framework failed to receive the number of votes required for adoption under NACHA voting rules. According to NACHA's same-day ACH request for comment (December 2014), one reason for the proposal's failure was that it created significant implementation costs for RDFIs without adequate options to offset those costs. Other reasons cited for the failure of the earlier proposal were the insufficient value to originators, and the uncertainty around when funds would be available to receivers.

Two commenters (a large bank and one letter representing two merchant associations) opposed an interbank fee of any amount. The large bank commenter argued that any interbank fee will disproportionately compensate the largest RDFIs, resulting in unintended negative effects such as higher end-user fees. The merchant associations expressed concerns that the interbank fee will impair competition and may have antitrust implications. The large bank commenter requested that the Board proceed with a mandatory same-day ACH service without any interbank fee. The merchant associations believed that the Board lacks authority to require the Reserve Banks to collect and transfer an interbank fee. Several commenters expressed other concerns with the interbank fee: That NACHA would increase the interbank fee in the future, and that ODFIs would pass the interbank fee on to their customers using the service.

After considering the comments received, and given the rejection of NACHA's 2011 EPS proposal, the Board has concluded that in this specific instance an interbank fee is necessary to achieve a ubiquitous same-day ACH service.<sup>18</sup> Many commenters argued that the inclusion of an interbank fee increased RDFIs' willingness to approve NACHA's amended operating rules because without an interbank fee, RDFIs would have lacked the needed business justification to approve the mandatory receipt requirement that is critical to achieving ubiquity. In addition, as noted above, the Federal Reserve's current same-day ACH service, which is not mandatory and does not include an interbank fee, is not widely used. The Board considered whether a ubiquitous same-day ACH service could be achieved by mandating in the Reserve Banks' Operating Circular 4 that FedACH customers receive same-day ACH transactions without providing for an interbank fee. The Board does not believe that this is a viable alternative. As described above, the Reserve Banks' Operating Circular 4 applies only to FedACH customers and does not govern ACH transactions conducted through the other ACH operator, EPN. Therefore, any mandate adopted by the Reserve Banks would apply only to FedACH customers and not to EPN customers,

<sup>18</sup> The Board's belief that, on balance, the interbank fee is necessary in this instance is based on circumstances specific to the nature of the existing ACH network, its governance, and the requirements of the amended operating rules. Interbank fees may not be necessary or appropriate in the implementation of other payment services or systems.

<sup>14</sup> Federal Reserve System (2015), "Strategies for Improving the U.S. Payment System," (Federal Reserve System, January), [fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf](http://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf).

resulting in a same-day service that is not ubiquitous.<sup>19</sup> The Board also believes that the interbank fee must be implemented by the Reserve Banks as ACH operator, as it would be infeasible for thousands of depository institutions to collect interbank fees bilaterally. The Board has authority to require the Reserve Banks to collect and transfer this fee under the Federal Reserve Act.<sup>20</sup>

In order to calculate a per-transaction interbank fee that would allow RDFIs in the aggregate to recover implementation and ongoing operational costs associated with the receipt of same-day ACH transactions, the Board believes that an appropriate methodology requires certain inputs: A projection of one-time implementation costs associated with same-day ACH receipt, a projection of ongoing costs associated with same-day ACH receipt, and projections of future same-day ACH volume. The process would include obtaining data from participants in the ACH system, estimating the relationship between costs and transaction volume, extrapolating those estimates to the broader universe of ACH participants, and projecting future costs and transaction volume.

NACHA commissioned a consultant to calculate the interbank fee. The Board has reviewed the consultant's methodology, which contained the inputs discussed above. The Board also reviewed the consultant's assumptions and judgments necessary to construct these inputs and use them to construct the fee. The Board believes the data and analysis provide a reasonable basis for the interbank fee, given the fact that NACHA had to collect data from voluntary respondents, make various

projections into the future, and deal with significant non-response.<sup>21</sup>

To facilitate its projections, the consultant surveyed a sample of RDFIs to obtain those banks' projected implementation and ongoing operational costs. The consultant also interviewed banks and third-party processors to understand the potential uses of same-day ACH. Based on interviews, the consultant determined that the largest RDFIs typically use internal systems to process ACH transactions, while other RDFIs typically outsource to third-party processors. Accordingly, the consultant asked only large RDFIs and third-party processors about one-time implementation costs. All surveyed RDFIs were asked about ongoing operational costs under three different same-day volume scenarios. Fourteen large RDFIs and 175 smaller RDFIs responded to the survey, yielding a sample with reasonable representation across RDFI sizes. The Board reviewed the survey instruments and cost data aggregated in seven groups according to RDFI size; NACHA did not make cost data of individual survey respondents available, citing confidentiality provisions under which the data were provided by RDFIs. The Board believes the survey instrument was reasonably designed to obtain the necessary data.

Using data from these RDFIs, the consultant estimated relationships between costs and volumes, and used these relationships to extrapolate to non-responding RDFIs. Projections of same-day ACH volume were based upon information from ODFIs, NACHA, and other subject matter experts. Projected adoption rates for ten broad use cases formed the basis for the projections of total same-day ACH volume. Given its projections of costs and volumes, the consultant chose a fee that, by its calculation, sets the present discounted value of aggregate projected RDFI interbank fee revenues equal to the present discounted value of aggregate projected RDFI costs for all RDFIs as a whole.<sup>22</sup>

The Board recognizes that projections of future costs and volumes are inherently subjective, but believes the approach used to determine the interbank fee is reasonable. Specifically, interviews with industry participants

and extensive review of potential use cases provided a reasonable basis for estimating future demand for a product that has not yet been introduced. Also, the collection of data from a sample of RDFIs of varying sizes through a survey was a sensible way to assess potential costs of the service. The Board not only reviewed the methodology used to calculate the fee, but also considered the implications of the fee for the ACH industry. The Board found the fee to be reasonable once NACHA addressed issues with respect to opportunity costs in the fee and the potential for the fee to rise over time, as described below.

NACHA issued its same-day ACH rule for public comment in December 2014. At that time, NACHA proposed an interbank fee of 8.2 cents. The calculation of that fee included opportunity costs resulting from the movement of transactions from higher-margin payments methods, such as wire, to same-day ACH, essentially transferring to same-day ACH the high margins that result from banks having market power in other services. In its final rule, NACHA removed the opportunity cost component of the fee, thereby lowering the fee from 8.2 to 5.2 cents.

The Board believes that the lower interbank fee of 5.2 cents reasonably balances depository institutions' ability to offset costs with the needs of ACH end users. As discussed above, a 5.2 cent interbank fee would allow cost recovery for RDFIs as a whole. Although the fee may not allow full cost recovery for all RDFIs, it will allow all RDFIs to offset a portion of their costs. The Board expects that, in most cases, the interbank fee will ultimately be borne by end users that originate same-day ACH transactions, a concern echoed by several commenters. For some originators, faster settlement or funds availability associated with same-day ACH may be worth these potentially higher costs, and their same-day ACH costs (even with the pass-through of the interbank fee) may still be substantially lower than the costs they would incur using other payment methods, such as wire transfers. Originators that wish to avoid such potential costs can continue to use existing lower-cost next-day ACH options and the Federal Reserve has no plans to eliminate its next-day ACH settlement. The Board believes that a higher interbank fee would likely result in higher costs being passed to originators and may reduce demand for

<sup>19</sup> NACHA made the implementation of the amended operating rules contingent on the Federal Reserve's support. If the Board had determined that the Reserve Banks should not adopt the proposed enhancements and provide same-day ACH service under the amended operating rules, they would not go into effect.

<sup>20</sup> Specifically, the Board has authority to require the Reserve Banks to collect and transfer this fee under the following provisions of the Federal Reserve Act: Section 11A (12 U.S.C. 248a), section 11(j) (12 U.S.C. 248(j)), and paragraph 14 of section 16 (12 U.S.C. 248-1). The Board's general supervisory authority over Reserve Banks, along with its specific authority to require Reserve Banks to act as a clearing house for financial institutions, includes the ability to devise methods to cover the costs incident to the Reserve Banks' clearing activities. See *Fraternal Order of Police v. Board of Governors of the Federal Reserve System*, 391 F. Supp.2d 1 (D.D.C. 2005). Moreover, an interbank fee for same-day ACH transactions is no different, in effect, from a situation in which the Reserve Bank is required to pay a fee to an RDFI and therefore requires ODFIs to pay the fee to the Reserve Bank in order to recover Reserve Bank costs.

<sup>21</sup> The Board would likely have encountered similar limitations had it undertaken this survey and calculation directly.

<sup>22</sup> NACHA used a 12.2 percent rate of return to discount future revenue and cost streams associated with same-day ACH. The Board has determined that that a 12.2 percent rate of return is not unreasonable for a new, relatively high-risk venture such as same-day ACH.

same-day ACH services, resulting in a ubiquitous but lesser-used service.<sup>23</sup>

The Board has not adopted the suggestion to tier the fee to allow smaller institutions to recover more than the 5.2 cent fee because it does not believe there is a clear correlation between institution size and implementation costs. As described above, smaller RDFIs often outsource their ACH and transaction account processing, and may not incur costs as material as those RDFIs that do not outsource this processing.

The Board does not believe that the interbank fee will rise over time, as has been the experience in the card industry. To address this concern, NACHA proposed provisions that provided for the potential reduction in the fee, and adopted a rule to ensure that the fee could not be increased in the future. The Board recognizes that NACHA members could vote to amend NACHA's operating rules to allow the interbank fee to increase above 5.2 cents, but no such increase would apply to FedACH same-day volume unless the Board and the Reserve Banks (as ACH operator) agree to such an increase.

NACHA's amended operating rules also include a 5-year review and 8-year review of the fee. At each of these reviews, if the volume of same-day transactions exceeds the NACHA projection by more than 25 percent, the fee will be lowered to a level pre-calculated by NACHA and intended to allow RDFIs achieve cost recovery on an aggregate basis. A schedule of possible fee decreases is available on the Board's Web site.<sup>24</sup> If the fee is lowered as a result of such reviews, the lower fee amount establishes a new ceiling, above which the interbank fee cannot rise. The Board believes that the lower interbank fee of 5.2 cents, combined with regularly scheduled reviews to determine any necessary reduction in the fee in pre-calculated intervals, allow cost recovery for RDFIs over time while maintaining the attractiveness of the same-day service to ODFIs and originators.

Based on its review of these comments, the Board has approved enhancements to the Reserve Banks' existing FedACH SameDay Service to include an interbank fee paid by ODFIs to RDFIs not to exceed 5.2 cents for each forward same-day transaction and to decrease that fee according to the fee

schedules published on the Board's public Web site in the event that same-day ACH volume exceeds projections by more than 25 percent during one of the regularly scheduled review periods. Any other changes to the interbank fee will require additional consideration and action by the Board.

### C. Other Topics Raised

The Board received comments on several other topics related to enhancements to the Reserve Banks' existing FedACH SameDay Service.

#### (i) Processing Windows

Several commenters raised questions about the processing and settlement windows for same-day ACH transactions. As noted above, one commenter asked the Board to consider a single morning submission and afternoon settlement deadline, while another commenter argued that institutions outside the Eastern Time Zone will only gain limited benefits from same-day ACH. A third commenter requested that the Board consider extending its National Settlement Service deadline to be inclusive of business hours in all U.S. time zones.

The Reserve Banks are reviewing the same-day ACH processing windows and will work with NACHA and EPN to establish processing schedules that are convenient for as many institutions as possible across the network. The Board has also previously expressed its intent to enhance the National Settlement Service and will review extended deadlines and potential enhancements as described in the Strategies Paper.<sup>25</sup>

#### (ii) Fraud Risks

Several commenters noted an increased potential for fraud with same-day ACH transactions related to shorter processing windows. The Board recognizes that same-day ACH transactions may have a different risk profile than existing next-day ACH transactions. The Reserve Banks have in place alert services that can assist RDFIs

in monitoring risk profiles specific to same-day ACH transactions, and the Board is aware that NACHA and the regional payment associations have already started reviewing risk management issues related to same-day ACH transactions. The Board believes that any risks related to same-day ACH can be appropriately mitigated by the industry in collaboration with NACHA and the ACH operators.

#### (iii) Continued Availability of Existing ACH Capabilities

Several commenters expressed concerns that the availability of same-day ACH services would lead to the discontinuation or unnecessary migration away from low-cost next-day ACH services. The Board believes that next-day ACH services will remain relevant in light of likely continued demand by end users for low cost and efficient options for payments that do not require same-day settlement or processing, such as regularly scheduled payroll files or bill payments. Retaining next-day ACH service also reduces operational risk by allowing ODFIs and operators an opportunity to recover from disruptions without delaying the settlement of transactions.

The Federal Reserve has no plans to discontinue next-day services, but it cannot ensure that any given depository institution would continue to offer next-day ACH origination services to its customers. In a competitive marketplace for deposit and payment services, however, if a depository institution were to stop offering next-day ACH origination to its customers, the demand for that service would likely be met by other depository institutions.

The Board does not believe that ODFIs will cease offering next-day ACH origination in an effort to drive volume to same-day ACH transactions, thus increasing RDFI interbank fee revenue. If that were to happen, same-day ACH volume would far exceed the volume expectations used in calculating the 5.2 cent interbank fee, which would result in a reduction of the fee following the regularly scheduled reviews. The Board intends to monitor the adoption of same-day ACH and the continued availability of next-day ACH services. The Board will reevaluate the amount and appropriateness of any interbank fee if low-cost next-day ACH origination services are widely replaced by same-day ACH services, increasing costs to originators.

<sup>23</sup> Four of the five commenters representing end users supported adoption of the proposed enhancements, including the interbank fee. This support, however, was based on an interbank fee of 5.2 cents.

<sup>24</sup> [http://www.federalreserve.gov/paymentsystems/fedach\\_about.htm](http://www.federalreserve.gov/paymentsystems/fedach_about.htm).

<sup>25</sup> As described in the Strategies Paper (1) the first phase, which went into effect in January 2015, expanded the operating hours of the National Settlement Service by opening the settlement window one hour earlier (at 7:30 a.m. ET) and closing it one half-hour later (at 5:30 p.m. ET); (2) the second phase, projected for year-end 2015, will accelerate the opening time to coincide with the 9:00 p.m. ET opening of the Fedwire® Funds Service (on the prior calendar date); (3) the third phase, projected for 2016 or beyond, will explore the technology, infrastructure and operational and resource changes required to support weekend and/or 24x7 operating hours. Federal Reserve System (2015), "Strategies for Improving the U.S. Payment System," (Federal Reserve System, January), [fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf](http://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf).

### III. Criteria for Evaluating the Federal Reserve's Role in the Payment System

#### A. New Services and Service Enhancements

In considering new services and major service enhancements to existing Reserve Bank services, the Board requires the following criteria be met: the service must enable full long-run recovery of costs by the Reserve Banks; the service must yield a clear public benefit; and the service must be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.<sup>26</sup>

The Board believes that the introduction of a FedACH same-day service with mandatory participation by RDFIs and an interbank fee meets these criteria.<sup>27</sup> The service will not adversely affect the Reserve Banks' ability to recover the cost of providing the ACH service over the long run as operating costs can be recovered through fees charged for using the Reserve Banks' ACH services.<sup>28</sup>

The service also offers clear public benefits. Same-day ACH capability will facilitate the use of the ACH network for certain time-critical payments, accelerate final settlement, and improve funds availability to payment recipients. The Board believes that a ubiquitous same-day ACH service would enhance the efficiency of the ACH network and the broader U.S. payment system by providing a more efficient electronic payment option for person-to-person payments, expedited bill payments, same-day payroll payments, and other types of transactions. As several commenters noted, this is consistent with the strategic goals identified in the Strategies Paper.<sup>29</sup>

<sup>26</sup> See *The Federal Reserve in the Payments System* (issued 1984; revised 1990), Federal Reserve Regulatory Service 9-1557, [http://www.federalreserve.gov/paymentsystems/pfs\\_frpaysys.htm](http://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm). Clear public benefits include promoting the integrity of the payments system, improving the effectiveness of financial markets, reducing the risk associated with payments and securities-transfer services, or improving the efficiency of the payments system. *Id.*

<sup>27</sup> Although comment was not specifically requested on whether adoption of the service satisfied the Board's criteria, several commenters addressed the subject and all agreed with the Board's analysis that the criteria would be met.

<sup>28</sup> The Reserve Banks intend to review current FedACH SameDay Service fees to determine whether any changes are appropriate as a result of the enhancements.

<sup>29</sup> The Strategies Paper communicates desired outcomes for the payment system and outlines the strategies the Federal Reserve will pursue, in collaboration with stakeholders, to help the country achieve these outcomes. One of the specific strategies for improving the U.S. payment system in the Strategies Paper is enhanced Reserve Bank payment, settlement, and risk-management services through promoting greater use of same-day ACH

The Board also believes that the private sector cannot be expected to provide the service alone with reasonable effectiveness, scope, or equity. Without incorporation of NACHA's amended operating rules by the Reserve Banks, a viable same-day ACH service would be unlikely.<sup>30</sup> Without the ability to reach any RDFI in the ACH network, the Board believes that any same-day ACH service would be ineffective and any corresponding public benefits would be limited.

#### B. Competitive Impact Analysis

When considering changes to an existing service, the Board also conducts a competitive impact analysis to determine whether there will be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve's dominant market position deriving from such legal differences.<sup>31</sup> The Board believes that there are no adverse effects to other service providers resulting from adoption of the amended operating rules. The changes to the Reserve Banks' existing service conform the service to industry-wide ACH operating rules that can be adopted by both ACH operators.<sup>32</sup> The changes are not the result of any differing legal powers or any dominant market position resulting from legal differences.

### IV. Conclusion

Based on its review of comments received, the Board has approved enhancements to the Reserve Banks' FedACH SameDay Service that require RDFIs to participate in the service and ODFIs to pay a fee to RDFIs for each same-day ACH forward transaction. The enhancements will be adopted by incorporation of NACHA's amended operating rules into Operating Circular 4, governing the Reserve Banks' ACH services.

capabilities. Federal Reserve System (2015), "Strategies for Improving the U.S. Payment System," (Federal Reserve System, January), [fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf](http://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf).

<sup>30</sup> This is evidenced by the limited adoption of the Reserve Banks' current optional FedACH SameDay Service.

<sup>31</sup> See *The Federal Reserve in the Payments System* (issued 1984; revised 1990), Federal Reserve Regulatory Service 9-1558, [http://www.federalreserve.gov/paymentsystems/pfs\\_frpaysys.htm](http://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm).

<sup>32</sup> TCH, owner of EPN, indicated its strong support for the enhancements in two separate comments submitted to the Board.

By order of the Board of Governors of the Federal Reserve System, September 23, 2015.

**Robert deV. Frierson,**  
*Secretary of the Board.*

[FR Doc. 2015-24551 Filed 9-25-15; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2015-0055; Sequence 16; OMB Control No. 9000-0107]

#### Information Collection; Notice of Radioactive Materials

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding the extension of a previously existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Notice of Radioactive Materials.

**DATES:** Submit comments on or before November 27, 2015.

**ADDRESSES:** Submit comments identified by Information Collection 9000-0107, Notice of Radioactive Materials, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0107, Notice of Radioactive Materials". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0107, Notice of Radioactive Materials" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000-0107, Notice of Radioactive Materials.

**Instructions:** Please submit comments only and cite Information Collection 9000-0107, Notice of Radioactive