July 2, 2015

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on Same Day ACH Proposal

Dear Secretary Frierson:

Thank you for the opportunity to comment on the Federal Reserve Board's proposal to enable same-day ACH processing. These comments are submitted by the National Consumer Law Center (on behalf of its low income clients), the Center for Responsible Lending, Commonomics USA, Consumer Federation of America, Consumers Union, Reinvestment Partners, U.S. PIRG, Woodstock Institute and Professor Mark Budnitz of the Georgia State University College of Law.[1]

Consumers will benefit from faster payments, and we support the proposal to faciliate same day ACH payments. We agree that requiring receiving financial institutions to accept same day ACH payments for same day settlement is critical to achieving the ubiquity necessary to make the service useful.

We also appreciate the requirement that the funds will be available for cash withdrawal the same day. We do, however, have concerns about the implications of the new interbank fee and whether it will be an excuse or precedent for higher fees on consumers for electronic payments.

***Consumers Can Benefit From Faster Payments***

The option of same-day ACH payments can benefit consumers in a number of situations. Same-day payments could be important to consumers in these and other contexts:

- ***Payroll.*** Employees often live paycheck to paycheck, especially hourly employees. Late payrolls can impose serious consequences on families who are counting on today's paycheck to pay the rent and other immediate necessities. The proposal will provide an option for employers who need to get pay quickly to their employees in the case of emergency payrolls, missed deadlines, and last day pay.

- ***Expedited bill payment.*** Consumers who struggle paycheck-to-paycheck do not always have the luxury of paying their bills ahead of time. Families juggling jobs, children and consumers with busy lives also occasionally discover that they overlooked a bill that must be paid today. Having the option of same-day ACH payments will help consumers to pay their bills on time and avoid late fees, utility service terminations, and other serious consequences.

- ***Account-to-account transfers.*** Same-day ACH payments can also help consumers to move money among their accounts and get it where it needs to be so that they can access it for bills and other needs.

[1] Organizational descriptions are attached to these comments.

Having the option of a same-day ACH payment will be very useful to consumers in these and other situations.

***Same Day Funds Availability is Important to Consumers***

Same-day access to funds is critical for many of the consumer use cases for same-day ACH payments. Same-day wage payments do little if the employees cannot withdrawal their funds that day. Same-day bill payments may not accomplish their purpose if the biller does not give the consumer immediate credit for having paid on time. Consequently, we appreciate and support the requirement in the proposed rule that the funds must be credited to the receiver's account by 5:00 pm same day.

***Faster Payments and Funds Availability Will Help Consumers to Manage Their Accounts***

Another benefit of faster electronic payments and faster funds availability is that it will help consumers to have better, real-time information about their account balances and transactions. As consumers move away from paper checkbook recorders and towards electronic methods of keeping track of their balances, they can be hit with overdraft and nonsufficient funds fees if the balance they are told is inaccurate. When consumers checks their balances at an ATM, by telephone, online or through a mobile app, faster payments and funds availability will help to make that balance more accurate.

***Same Day ACH Payments Will Continue to be Protected by Regulation E and NACHA Rules***

Critical to our support for the same-day ACH proposal is the comfort in knowing that faster payments will still be protected by the consumer protection rules in the Electronic Fund Transfer Act, Regulation E and NACHA rules. Faster payments can give scammers faster access to take money out of consumers' accounts. But existing consumer protection rules will continue to give consumers the time to review their accounts and to dispute unauthorized charges, and will continue to impose duties on financial institutions to resolve errors and re-credit accounts where appropriate. Faster payments should never come at the expense of consumer protections.

***The Proposed Interbank Fee Should Not be an Excuse to Increase Fees to Consumers for Electronic Payments***

The one area of concern we have is the proposed 5.2 cent interbank fee. We understand that the fee is to be paid by the Originating Depository Financial Institution (ODFI) to the Receiving Depository Financial Institution (RDFI) and is not being imposed directly on consumers. But if the consumer originates the payment, his or her bank may pass on the fee. Or, if the transaction is an ACH debit against the consumer's account, the ODFI may pass the fee on to the merchant (*i.e.,* a credit card company or utility that is being paid) which, in turn, could pass it on to the consumer.

While the 5.2 cent fee is low, it could be marked up and be an excuse for a new system that imposes greater costs on consumers who make or receive electronic payments. These fears are not without precedent. As the Federal Reserve Bank of Boston observed: "Banks charge end users [of Fedwire] $20-$40 per payment while the incremental cost to banks is less than 30 cents."[2]

[2] Claire Greene *et al*., Federal Reserve Bank of Boston, No. 14-5, Costs and Benefits of Building Faster Payment Systems: The U.K. Experience and Implications for the United States at 41 (Feb. 24, 2015), https://www.bostonfed.org/economic/current-policy-perspectives/2014/cpp1405.htm.

Indeed, the FRB's separate research into additional strategies for speeding up payments assumes that faster payments would be monetized and could generate $1.4 billion in profits, "pending further research into end-user willingness to pay."[3] In a world where banks continue to be hungry for fee revenue and are trying to make up for cuts in interchange and overdraft fees, consumers could lose out.

We are especially fearful of the impact of new fees on the most vulnerable, lower-income consumers. Those are the consumers who live paycheck-to-paycheck and may most need same day payments, but can least afford to pay for them. The mere fact that a consumer is willing to pay a fee when they are desperate to get their rent paid on time or avoid a utility shut off does not mean that the system should take advantage of that desperation and profit from it.

It is also worth noting that same day settlement is not always critical to the consumer use cases outlined above. Like they do today, a mortgage company or utility that originates an ACH debit entry can give the consumer credit for paying on time and forgo any late fee even if the payment does not settle until the next day. A bank can give the consumer access to funds that it knows are coming even if the transaction has not settled, as many banks do today with check deposits. That is, consumers could end up paying for a service that is not actually necessary in a given case.

While the proposed fee will apply only to a minority of ACH payments and not to the bulk of ACH payments made under current rules, that may change. As same-day or even real-time payments become more of the norm, payments could migrate to faster systems even in situations where fast settlement is less critical. Ultimately, slower payments may disappear and every electronic payment may be made through a same day or even near-real-time system.

We urge financial institutions to absorb the interbank fee as a cost of overhead and not to pass it on to consumers. Indeed, these improvements are long overdue and are simply part of the process of keeping the infrastructure of our payment system up to date.

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Overall, we support the proposed rules and believe that consumers will benefit by having the option of same-day ACH to receive funds and make payments. Thank you for considering our comments.

Yours very truly,

National Consumer Law Center (on behalf of its low income clients)
Center for Responsible Lending
Commonomics USA
Consumer Federation of America
Consumers Union
Reinvestment Partners
U.S. PIRG,
Mark Budnitz, Professor of Law Emeritus, Georgia State University College of Law Woodstock Institute

[3] Federal Reserve System, Strategies for Improving the U.S. Payment System at 43, 44 (Jan. 26, 2015), https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf.

**Attachment: Descriptions of Commenters**

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

**Mark Budnitz** is Professor of Law Emeritus, at Georgia State University College of Law. He is the author of numerous articles on payments law, a co-author of the National Consumer Law Center's Consumer Banking and Payments Law, and author of The Law of Lender Liability from 1990 to 2010.
The **Center for Responsible Lending (CRL)** is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund.

**Commonomics USA** advocates economic solutions that grow our common wealth. We spotlight ways private interests are defunding and privatizing the commons and show how their actions devastate families and diminish communities. With other organizations, we fight privatization and demand that the commons be funded and even expanded to more fully benefit everyone.
The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

**Consumers Union** is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

**Woodstock Institute** is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance. Woodstock Institute has been a recognized economic justice leader and bridge-builder between communities and policymakers in this field since it was founded in 1973 near Woodstock, Illinois. Now based in Chicago, we work with community and philanthropic groups, financial institutions, and policymakers.

**U.S. Public Interest Research Group (U.S. PIRG)** serves as the Federation of State PIRGs, which are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members. For years, U.S. PIRG's consumer program has designated a fair financial marketplace as a priority. Our advocacy work has focused on issues including credit and debit cards, deposit accounts, payday lending, student loans, credit report accuracy, privacy of customer information (including data breaches) and, generally, any unfair and deceptive practices.