

Effective September 18, 2009: New Transaction Type

Background

In August 2007, the National Automated Clearing House Association ("NACHA") approved a new rule and with it a new format for international ACH transactions (IAT) entries. Development of the rules and format came about due to the U.S. Office of Foreign Assets and Control ("OFAC") pressing NACHA to compel its ACH participants to identify their international entries. Under the new Rules, IAT entries will now be subject to OFAC screening. This new format incorporates required fields that help provide transparency by identifying those financial institutions handling the entries and the addresses of both the originator and receiver. The new fields will be used by Banco Popular and other U.S. financial institutions in their OFAC screening process. It is a similar process to current regulatory screening requirements within the domestic wire transfer networks.

What is an international ACH entry?

An International ACH Transaction is an ACH entry that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. Specifically, an office of a financial agency is involved in the payment transaction if it:

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

How do I know if we need to prepare for the IAT Rule change?

ACH network participants need to identify whether any of their ACH entries should be identified as IAT entries. Currently, some of the international ACH entries within the ACH network look like domestic entries and are identified with the existing Standard Entry Class (SEC) codes such as PPD, CCD, or CTX. However, in the future you will be required to identify some of these entries with the IAT code based on the international ACH definition.

NACHA has developed several representative scenarios to illustrate situations which might give rise to a determination of an IAT versus a domestic ACH transaction. You can download these scenarios from NACHA's web site:

http://www.nacha.org/IAT_Industry_Information/.

What are some of the indicators that might determine that my organization will originate IAT entries when the new rules are in effect?

After reviewing the NACHA Scenarios, these are the questions you may wish to ask internally in order to determine whether your organization will originate IAT entries:

Q. When your organization transmits ACH origination files, is an account at the office of an offshore financial agency involved in the funding of the originated entries?

Q. When your organization originates ACH credits into the ACH network, does a receiver's account at the office of an offshore financial agency ultimately receive the funds?

Q. When your organization transmits ACH originated entries into the ACH network, does an office of an offshore financial agency serve as an intermediary in the settlement of any part of the payment transaction?

As a Corporate Originator, does OFAC impact me?

Yes, U.S. corporations are required to comply with OFAC obligations, and the penalties for ignoring those obligations can be both criminal and civil and include both jail time and fines. The fines for violations can be substantial. Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from \$250,000 or twice the amount of each underlying transaction to \$1,075,000 for each violation. If these fines are levied against the financial institution they may be passed back to the corporate originator depending on the specifics of the case and the details of their contract with the financial institution. The fines are levied by the U.S. government and funds collected are the property of the government, not the financial institution. Additional information on OFAC obligations and fines can be found at <http://www.treas.gov/offices/enforcement/ofac/>.

Note: An organization can also be a Third Party Sender or a third party processor acting on behalf of the originating company.

Where can I find updates and more information on the IAT rule change?

NACHA has devoted an area of their web site to educational documents regarding IAT.

http://www.nacha.org/IAT_Industry_Information/

Action Required:

We need to know if you understand that IAT does affect your organization. There are two ways to notify us:

Contact TeleBanco Comercial at 787-756-9130 or 1-888-756-9130.