



AFP Members Debate ACH

AFP Exchange's "What Would You Do?" column poses a challenging treasury or finance question, and features responses from the AFP membership and other leading industry experts.

The following question appeared recently on the AFP Discussion List for Treasury and Cash Management. The list is one of several e-mail forums AFP hosts that provide a valuable

resource for members seeking immediate feedback from their peers or those simply wanting to learn from others' workplace challenges.

ONLINE RESOURCES

Subscribe to various AFP Discussion Lists today by updating your member profile at www.AFPonline.org. The list topics vary from studying for the Certified Treasury Professional exam to general treasury and cash management. Five other lists revolve around particular industries including retail, utility/energy, insurance, health services and manufacturing.

Ronald V. Johnson Jr., Vice President of Client Services, ACH/EDI Operations, KeyBank, N.A., Ronald.V.Johnson@keybank.com, said:

I believe it would violate the ACH Rules if an employee wanted to direct deposit the employee's pay into another person's account, *unless* the account holder provided the necessary authorization. The ACH Rules require, in pertinent part, that "the Receiver has authorized the Originator to initiate the entry to the Receiver's account" (Article Two, Subsection 2.1.2.).

Notwithstanding any potential ACH Rules violation, I'd strongly recommend against issuing the employee's direct deposit to another's account. The employee should also reconsider giving a third party 100% of her hard-earned pay. If I've correctly assumed that the employee is not a signatory on the third-party account, the employee is left at the mercy of the account holder to relinquish funds on demand. This could be problematic if 1) the relationship between the employee and account holder sours, 2) the account holder runs into legal problems and funds in the account are attached, or 3) the account holder creates an overdraft in the account and the employee's direct deposit credit is applied to the overdraft.

Joseph D. Tinucci, CTP, Assistant Director of Asset Management, University of Colorado, Joe.Tinucci@cusys.edu, said:

If the appropriate authorizations for direct deposit are in place (i.e., the employee properly gives her authorization to send her payroll deposit to a specified account), it doesn't matter where the funds are sent. The entire burden of authorization, and whether the employee actually has access to the account, is on the employee. (In this case, the term "Receiver" used in the Rules indicates "the natural person benefiting from the direct deposit" and is agnostic about whether the Receiver owns the specified account.)

As Ron also points out, it's another matter entirely when the funds actually arrive in the specified account. The employee may not have access to the account, and that's up to the employee to work out with the account owner.

This situation is very common in the payroll industry. A husband wishes to send his direct deposit to his wife's account, or vice versa, perhaps because he can't qualify to open a checking account. Or, even more often, the employee authorizes a secondary deposit of a specified amount to another account — perhaps to a savings account, or a parent's account to repay a school or car loan.

It's important to understand that the payment of wages owed and the account to which they go are independent of each other. If the company's payroll records show proper payment of funds owed to the employee, and if the records contain a proper authorization to deposit the funds to a specific account, the company has no concerns.

Rules for Direct Deposits

QUESTION: William A. Demaree Jr., CTP, Senior Financial Analyst, Southwest Gas Corporation, William.Demaree@swgas.com, asked:

One of our company's payroll representatives asked if it was OK for an employee to have money sent to her mother's account directly from her pay. Someone at a credit union told them it violated NACHA Rules unless the employee's name was on the account or the mother's name was in the name field of the direct deposit. Does it violate any ACH Rule(s) to send a direct deposit of the employee's pay into another person's account?

We heard again from KeyBank's Ron Johnson, who said:

We have to be careful about the term "authorizations." It's untrue that the burden of the authorization is entirely on the employee. Under the NACHA Rules, the originating depository financial institution (ODFI, or the bank) warrants that each entry "is in proper authorization provided by the Originator (employer) and Receiver (account holder)" (Article Two, Subsection 2.2.1.1.) Most banks, in turn, transfer that liability to their Originator/Client through the services agreement. Therefore, the liability for authorization really falls on the Originator and not the employee.

If the true account holder doesn't provide the authorization, then the payroll credit is unauthorized. Most people don't really complain about credits to their account, but it's important to keep in mind that this authorization requirement applies equally to credit and debit transactions. Just as it's impermissible for a person to "authorize" a debit to an account to which he's not a signatory, it's impermissible for the same person to authorize a credit to the same account.

[Editor's Note: Discussion list responses in between these postings suggested that NACHA Rules require the payee (name) on the ACH to match the account name, which we eventually learned wasn't accurate.]

Claudia Volk, CTP, AAP, CPA, Principal and Founder, CJVolk Associates, claudia@cjvolk.com, said:

NACHA Rules don't require that the payee name on the ACH match the name on the account. An RDFI [receiving depository financial institution] may return an entry where the payee name and name on the account don't match, but it isn't required to.

Article Four, Subsection 4.1.4. states, "If the account number and the name of the Receiver contained in an entry do not relate to the same account, the RDFI may rely solely on the account number contained in the entry for purposes of posting the entry to the Receiver's account."

Further, Return Code 03, No Account/Unable to Locate Account, states, "The account number structure is valid and it passes the check digit validation, but the account number does not correspond to the individual identified in the entry, or the account number designated is not an open account. (Note: This Return Reason Code may not be used to return ARC [accounts receivable conversion] or POP [point-of-purchase] entries that do not contain an Individual Name.)"



what would you do?

Michael J. Alfonsi, CTP, Managing Director, Analytic Results, Michael@AnalyticResults.com, said:

There's more than just ACH Rules to think about. For example, there's a fiduciary statute in Pennsylvania's employment law that places a reasonable care burden on the part of the employer, regarding the distribution of the employee's funds. (LDYM [Latsha, Davis, Yohe & McKenna, PC.] Opinion, 1999). That statute is further linked to (and takes its footing in) statutes concerning the garnishment of wages, the power to garnish and the necessary report, and the burdens on the employer for executing accurate record-keeping.

It's at least one in-house counsel's opinion that the crux of the issue revolves around who really has control of the funds. If the employee has full control, she can distribute funds however she wants. But what if control changes via a court order, power of attorney or another domestic relations order or garnishment action(s)? How can an employer track that, let alone place itself on the hook for it? Thus, the employer runs the risk of failing to ascertain or establish who controls the funds if it offers split mechanisms. In all

cases, once notified, the employer can be held responsible if an action isn't executed.

In Louisiana, an employee successfully recovered damages when a split-wage disbursement (to a brokerage account) wasn't executed. The finding was that the employer failed to execute it *despite* a written, hold-harmless agreement in place. The appellate court chimed in that "since there is reasonable care executed in corporate-executed financial transactions and this Court finds it is thus reasonable that the funds should have been transferred, thus the company is liable for ensuing damages."

I'm surprised at the volume of split payroll disbursements out there. If I was back in corporate life, I'd put a dead stop to it. One net pay — one payment medium (hopefully electronic) to one account. That's it.

On this question, it's prudent to form a little intra-company workgroup that also involves Legal and Audit. One of the many headaches to deal with will be the disparity you'll face if you operate in multiple states, as well as the very sensitivity around payroll disbursements.

NACHA Provides Some Insight

AFP Exchange also sought outside input from an industry authority who could provide definitive guidance on this topic.

From Michael Herd, a spokesman for NACHA- The Electronic Payments Association, mherd@nacha.org, we heard:

The NACHA Rules require that an Originator of an ACH credit obtain the authorization of the Receiver. The Receiver is defined as a person who has authorized a credit entry to the Receiver's account with a receiving depository financial institution (RDFI).

In the case of an employee who wishes to direct some or all of her pay to an account to which she is not an account holder, the employer (Originator)

must obtain authorization from the account holder (Receiver). The NACHA Rules do not require ACH credits to be authorized in writing, as debits must be, but permit authorization by "other means." The NACHA Rules also permit, but do not require, an RDFI (i.e., an account holder's bank or credit union) to return an ACH credit when the account number does not correspond to the individual identified in the entry.

NACHA strongly recommends that all ACH Originators have a copy of the NACHA Rules. Banks often provide these to their corporate customers. The Rules and a corporate edition are available through NACHA's online publications catalog at <http://pubs.nacha.org/>. Purchasers of the rulebook have complete access to the ACH Rules online at <http://www.achrulesonline.org/>.

If you have a question you'd like to ask the membership in a future "What Would You Do?" column, please e-mail it to: Exchange@AFPOnline.org.