

# The New Third-Party Sender ACH Rule: It's Time to Get Your Ducks in a Row

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It's hard to believe but the second quarter of 2022 is already upon us! For those of you who are planners and looking ahead at the impact upcoming *ACH Rules* changes will have on your organization, especially changes surrounding Third-Party Senders, this article should certainly be of interest.

Effective September 30, 2022, the Third-Party Sender Roles and Responsibilities Rule will need to be addressed by your organization. Although the impact of this new Rule should be minimal to an ODFI, there are actions you need to take to prepare. If you are wondering why the 2022 *ACH Rules* do not contain the new Rule requirements, *Supplement #3-2021* (which can be downloaded from the EPCOR Knowledge Community) details the new Rule. The changes are also outlined in the Revisions section of the *ACH Rules*, beginning on page ORxxxv.

So, what are the impacts from an ODFI perspective? The biggest impact is the update to the ODFI/Third-Party Sender Origination Agreement. Agreements need to be updated to address the newly defined “Nested” Third-Party Sender. ODFIs must address whether a Third-Party Sender can process Entries on behalf of a Nested Third-Party Sender. This will require a business decision to be made by the ODFI. As with any decision of this nature, it should be made by the Board of Directors or a designated committee (i.e., Payments Committee, IT Steering Committee, etc.) and will require an update to existing ACH Risk Management policies.

As far as the actual ACH Origination Agreements, the requirement to include whether a Third-Party Sender can provide services to a Nested-Third Party Sender will need to be included in agreements going forward. In other words, an ODFI does not need to repaper all its ACH

Origination agreements. Only new Origination agreements or renewals enacted with a Third-Party Sender on or after the September 30, 2022, effective date must include this verbiage. However, ODFIs are highly encouraged to review and update their Origination agreements on a regular basis to include any impactful Rule changes.

If Nested Third-Party Senders are allowed, Third-Party Sender Origination agreements will also need to be updated to clarify that the Third-Party Sender is required to have an agreement with the Nested Third-Party Sender. This is in essence a “push down” effect for the chain of required agreements. This will maintain the legal concept of binding all parties to the *ACH Rules*. Also, you should consider your Third-Party Sender Agreement a legal contract and it is recommended that the agreement be reviewed by a legal representative of the ODFI.

If the business decision is made to not allow for a Third-Party Sender to provide services to Nested Third-Party Senders, it is recommended that a notification of that decision be provided to the existing Third-Party Senders for which the ODFI is processing. There should be documentation maintained regarding what was sent, who it was sent to and when it was sent. Some ODFIs may go one step further to require an assertion from the Third-Party Sender that they will not provide services to or are currently not providing services to Nested Third-Party Sender(s).

Additionally, the Rule will require that an ODFI identify all Third-Party Senders that are providing services to Nested Third-Party Sender(s). The identification process can be a bit of a challenge. One recommended method to assist with determining whether this type of relationship exists is to have an in-depth conversation with your Third-Party Sender. This will help you gain the necessary knowledge about your client's client base to help determine if there is the possibility

of Nested Third-Party relationship(s). Also, it is very beneficial to review Third-Party Sender's ACH files, specifically the company names contained in the ACH file. For example, if you see a company name like Martin & Sons CPA, you should determine if that specific CPA firm is processing payroll entries on behalf of the firm's employees or are they processing payroll entries on behalf of one of their CPA clients.

Once Nested Third-Party relationships have been identified, the ODFI must update the financial institution's Third-Party Sender registration within Nacha's Risk Management Portal. The update must occur within the later of 30 days of transmitting the first entry for the Nested-Third Party Sender or within 10 days of the ODFI becoming aware of the Nested Third-Party Sender relationship. The ODFI will also be required to provide any additional information about the Nested Third-Party Sender upon request by Nacha.

Lastly, the requirement for Third-Party Senders to conduct a formal ACH Risk Assessment should be addressed. While this requirement has been implied for many years, it is now explicitly stated. Similar to the ODFI Rule requirement to conduct an ACH Risk Assessment, the *Rules* do not specifically state how frequently an ACH Risk Assessment must be completed or who is required to complete the assessment. This Rule update may not specifically affect an ODFI, but the requirement is recommended to be addressed within the updated Third-Party Sender Origination agreement. This may be something an ODFI would require a Third-Party to attest to having been conducted.

The overall purpose of these *ACH Rules* changes is to formally address existing practices of Nested Third-Party Sender relationships and to address the ambiguity of the requirement for a Third-Party Sender to conduct an ACH Risk Assessment.



**Tip:** If you are considering providing services to a Third-Party Sender, ensure your new Third-Party

Sender Program is implemented in a wise and appropriate manner from the beginning. There is nothing worse than going through the process of cleaning up issues that could have been avoided from the beginning. EPCOR consulting staff is available to help with this process.



**Tip:** If you are currently providing ACH origination services to a Third-Party Sender and wonder if

your Third-Party Sender Program is sufficient and addresses the risk and expectations of the examiners, EPCOR consultants are also available to assist to provide a thorough examination and provide recommendations for your existing program.

No matter the need, our expert team is ready to assist you with almost any payments Audit, Risk Assessment, Advisory or Consulting Service. Email us at [audit@epcor.org](mailto:audit@epcor.org) for a free, no-obligation quote! 🟢