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July 22, 2011

*Via email: [reg.comments@federalreserve.gov](mailto:reg.comments@federalreserve.gov)*

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1419 and RIN No. 7100 AD76,  
Regulation E, Electronic Fund Transfers

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> is pleased to submit comments on the Board of Governors of the Federal Reserve System (Board) proposed revisions to Regulation E, Electronic Fund Transfers. This proposed rule is intended to implement Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act” or “the Act”) which establishes protections for consumers sending remittances from the U.S. to other countries.

Section 1073 requires, among other things, that financial institutions provide consumers with detailed disclosures regarding remittance transfers both before and after a transaction and provide consumers with error resolution procedures.

ICBA has signed a separate joint comment letter with The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, the Credit Union National Association, The Financial Services Roundtable, the NACHA – The Electronic Payments Association, and the National Association of Federal Credit Unions. The purpose of this submission is to explain the unique perspective of community banks and to provide recommendations based solely on that perspective.

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<sup>1</sup> The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers they serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1.2 trillion in assets, \$960 billion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

### **Community Banks' and Consumer International Funds Transfers**

The majority of community banks do not offer an international funds transfer service that is specifically developed for foreign-born United States residents to send “personal transfers” to households abroad. Instead, most community banks provide a single wire transfer service and, to a lesser extent ACH transfer service, that consumers use for a multitude of purposes, including: emergency transfers to friends and family traveling abroad, worker remittances, bill payments, purchases, investments, and wealth management.

These services generally are not widely used by community bank customers and do not represent significant revenue for most community banks. However, community banks offer these services as a means of serving their customers and accommodating their requests. Community banks offer international funds transfers, either by wire or ACH, to consumers in the same manner that they offer these services to businesses: with a single, flat fee--regardless of destination-- and a very competitive exchange rate.

Offering one rate for all international fund transfers enables community banks to easily train customer contact and operations staff and disclose the applicable costs to consumers. As a result of this pricing and disclosure, almost 52% of community banks average consumer international wire transfer exceeds is \$1,000<sup>2</sup>, well above \$300<sup>3</sup>, which is the average dollar amount for worker remittance transfers.

To execute these transfers, community banks use, almost exclusively, open network systems such as wire and ACH. Closed network systems such as Western Union involve the funds remaining within one network and being controlled from end-to-end. In contrast, open network systems involve funds being transferred out of the sending institution to their ultimate destination at an unaffiliated recipient institution. Many times those funds may pass through one or more intermediary institutions before arriving at the final destination. The open network funds transfer provider, thus, has significantly less information regarding the transaction. The open network provider will have the right to access only the information relevant to its direct correspondent banks and often will not know the identity of the intermediary institutions involved in the funds transfer.

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<sup>2</sup> Per preliminary results of the ICBA 2011 Community Bank Payment Survey conducted in June 2011.

<sup>3</sup> U.S. Department of Treasury, The Dodd-Frank Wall Street Reform and Consumer Protection Act Provides Federal Oversight for Remittance Transfers With the Creation of the Consumer Financial Protection Bureau (Oct. 2010), *citing* Sistema Económico Latinoamericano y del Caribe, Migration and remittances in times of recession (May 2009). <http://www.treasury.gov/initiatives/wsr/Documents/Fact%20Sheet%20-%20Provides%20Federal%20Oversight%20for%20Remittance%20Transfers,%20Oct%202010%20FINAL.pdf>.

Additionally, because of the infrequency of these transfers, most community banks rely on correspondent relationships with other banks, which add another layer of complexity to these transactions.

### **ICBA Comments and Recommendations**

ICBA is deeply concerned that the proposed rule, if implemented, would greatly diminish the viability of offering international funds transfers to consumers. The compliance burden associated will result in a majority of community banks abandoning these services, leaving their customers at the mercy of larger banks' services, or more likely, forcing them to use non-bank remittance providers that traditionally have high service fees and poor exchange rates. While offering clear and transparent disclosures are vital, it should not result in community banks abandoning lower cost alternatives, such as wire or ACH.

To address, these concerns, ICBA strongly urges the Federal Reserve make the following changes to the proposed rule:

- Exempt open network wire and ACH transfers from the final remittance transfer rule or develop a separate set of open network requirements that reflect the functionality and capabilities of open network systems.
- Take a less prescriptive approach to estimating rates and fees by requiring that providers base their estimates on reasonably available information.
- Not apply the one-day right of cancellation to open network transfer systems.
- Clarify the definition of "remittance transfer" to exempt any transaction (a) not destined to a natural person at a location outside the U.S., and (b) denominated for more than \$1,000.
- Include an exemption for institutions that have initiated less than 1,200 remittance transfers during the prior calendar year.

#### Compliance in Open Network Systems

ICBA believes that the proposed rule is oriented towards closed network, cash-based remittance models and does not adequately reflect the operational realities of open network transactions. Although Section 1073 provides certain exceptions intended to make disclosure requirements workable for open network transfers, the proposed rule implements those exceptions too narrowly. The exceptions also largely ignore the operational realities associated with such transfers.

A U.S. financial institution initiating a funds transfer has no knowledge or control over its clearing and settlement route, the exact exchange rate, the fees and taxes that will be subtracted from the payment by other institutions and governments, and date of receipt.

The Federal Reserve, however, has declined to grant an exception for open network systems. Instead, the proposed rule has deemed that only certain international ACH services offered by the Federal Reserve Banks constitute a method that prevents a provider from knowing the exact amount that will be received by the recipient. However, all open network remittances are subject to the same operational realities that make upfront disclosure of the exact amount to be received (as well as the exact date of funds availability) impossible for a remittance transfer provider to know.

ICBA urges the Federal Reserve to exempt open network wire and ACH transfers from the final remittance transfer rule. As an alternative, ICBA recommends that the Board should develop a separate set of open network requirements that reflect the functionality and capabilities of open network systems.

#### Estimates of Taxes, Fees, and Exchange Rates

The proposed rule's limited standards for generating estimates of taxes, fees, exchange rates, and other charges will require remittance transfer providers to base estimates on information that is very difficult, and in some instances, impossible for a community bank to determine. Further, the estimates will require labor intensive research that will not provide senders with information that makes the total cost of a transfer or receipt amount any more transparent than the information senders receive today about transfers sent via open networks.

For transfers sent via an open network, ICBA proposes a less prescriptive approach. Providers should simply base their estimates on the best information reasonably available to them along with a disclosure that states:

- the remittance transfer is being sent via an open network,
- the remittance transfer is subject to fees and rates the financial institution does not control, and
- the exact amount that the recipient will receive and the exact date on which funds will be available cannot be guaranteed.

This alternate disclosure would provide senders with realistic information about their wire or ACH remittance transfers and would enable financial institutions to continue to offer remittance services.

#### One-Day Right of Cancellation

Section 205.34(a) of the proposed rule states that a remittance transfer provider must comply with a sender's oral or written request to cancel a remittance transfer received no later than one business day from when the sender makes payment in connection with the remittance transfer provider.

ICBA is deeply concerned that the unintended consequence of this extended right to cancel a remittance transfer is that individuals making funds transfers that would qualify as remittance transfers under the proposed rule may no longer be able to send

wire transfers on the same day, forcing customers to closed network transfer systems.

Because wire and ACH transfers cannot be recalled once they are sent forward, financial institutions will delay the execution of cross border consumer transactions until the cancellation period has passed. This means consumers will lose the ability to send funds via wire and ACH the same day that they request the transfer. Community banks offer these services primarily to assist their customers, frequently in times of emergency, which requires, that their funds move as quickly as possible to the recipient. The proposed rule denies consumers this ability in the wire and ACH channels. ICBA requests that this provision not apply to open network transfer systems.

#### Impact to Non-Remittance Transfers

Section 205.30(d) of the proposed rule defines “remittance transfer” as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider.

The proposed rule applies the same consumer protections to high value and low value transfers. However, high value transfers have a different purpose than transfers made from immigrants to family members in foreign countries. For example, some individuals send large amounts of money overseas for real estate purchases, stock trades, and other investments. For these transfers, senders are typically most interested in the speed and finality of the transfer.

As mentioned above, the proposed rule will result in slower processing (due to the one day right to cancel) and delay finality (due to the 180 day error resolution period) of higher value transfers.

ICBA strongly urges that the Federal Reserve clarify the definition of “remittance transfer” to exempt any transaction (a) not destined to a natural person at a location outside the U.S., and (b) denominated for more than \$1,000.

#### Impact on Community Banks Senders

Section 205.30(e) of the proposed rule defines “remittance transfer provider” to mean any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.

ICBA is deeply concerned that this definition of remittance service provider will significantly impact the ability of community banks to offer remittance transfer services or any form of international funds transfers to consumers. Rather than increasing access to remittance transfer services, the costs and burdens associated with the proposed rule are likely to cause institutions to narrow their remittance transfer services and may even discourage institutions from offering these services altogether.

As an alternative, ICBA strongly urges the Federal Reserve include an exemption for institutions that have initiated less than 1,200 remittance transfers during the prior

calendar year, or less, should be excluded from the definition of remittance transfer provider. This exclusion should cover not only the sending bank, but any correspondent bank or intermediary that participates in the transfer.

In conclusion, ICBA urges the Federal Reserve to exempt open network systems, such as wire and ACH, from the final remittance transfer rule and develop a separate rule that is tailored to the operational realities of open networks. Additionally, ICBA urges the Federal Reserve to exclude open network transfer systems from the one-day right of cancellation provision. Finally, ICBA urges the Federal Reserve to clarify the definition of remittance transfer to exclude any transaction not destined to a natural person or denominated for more than \$1,000 and that the definition not include banks that have a minimum number of remittance transfers during the previous year calendar year.

Again, ICBA appreciates the opportunity to comment on this important proposal. Please do not hesitate to contact me at [cary.whaley@icba.org](mailto:cary.whaley@icba.org) or 202.659.8111 with any questions regarding our comments.

Sincerely,

/s/

Cary Whaley  
Vice President, Payments and Technology Policy