International Bancshares
Corporation

July 11, 2011

***Via email:* <u>*regs.comments@federalreserve.gov*</u>**

Board of Governors of the Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1419; RIN 7100-AD76; Comments to Proposed Remittance Transfers Rule ("Proposal") Board of Governors of the Federal Reserve System ("FRB")

Ladies and Gentlemen:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains over 278 facilities and more than 440 ATMs, which serve 107 communities in Texas and Oklahoma. IBC is the largest Hispanic-owned financial holding company in the continental United States with over $12.2 billion in assets. IBC is a publicly-traded holding company. We appreciate the opportunity to comment on the FRB's Proposal.

Redundancy of Proposal

Section 1073 of the Dodd-Frank Act added a new section 919 to the Electronic Fund Transfer Act ("EFTA") to require certain disclosures and to impose new error resolution provisions with respect to remittance transfers to consumers or entities in a foreign country.[1] The FRB's Proposal would implement these provisions.

We believe many of the Proposal's requirements are redundant, complex, and unnecessary. As the Proposal's preamble notes, the amendment of the EFTA to include remittance transfers presents a challenging interface with Article 4A of the Uniform Commercial Code ("U.C.C."), because U.C.C. § 4A-108 provides that it does not apply to a "funds transfer" any part of which is governed by the EFTA "as amended from time to time." There may be a significant number of times in which a remittance transfer would fall within the definition of a "funds transfer" under U.C.C. Article 4A, but for the fact that Congress inserted the remittance transfer provision into the EFTA. A "funds transfer" under U.C.C. Article 4A is generally a transfer in which a person instructs the originating bank to transfer funds to the beneficiary at the beneficiary's bank, known as a "credit funds transfer."[2] U.C.C. Article 4A does not cover debit funds transfers.

1 Remittance transfers of less than $15 are not subject to the proposed rule. See EFTA § 919(g)(2)(B) (excluding from the remittance transfer provisions "small-value" transactions determined by rule to be excluded from the receipt requirements of EFTA § 906(a)); 12 C.F.R. § 205.10(e) (excluding transfers of "$15 or less" from the receipt requirements of EFTA § 906(a)).
2 U.C.C. § 4A-104.

U.C.C. Article 4A already requires remittance transfer providers to give wire transfer senders a notice of rights and limitations which explains certain rights and protections given to senders, and requires providers to have commercially reasonable security procedures. We also believe that the redundancy and the complexity of the Proposal's many requirements are likely to increase the cost of remittances and, thus, deter many community banks from offering this product to their customers. This would be disadvantageous to consumers.

Required Disclosures

The Proposal would require a remittance transfer provider to provide to each "sender" of a remittance transfer a disclosure describing the amount of currency that will be received by the "designated recipient" of the transfer, the fees that will be charged by the remittance transfer provider, and the exchange rate.[3] We believe the final regulation should permit a provider to disclose an approximate amount of money to be received by the recipient less any fees to be assessed by the foreign banks as providers will not know the precise amount of fees to be charged by the foreign banks.

The remittance transfer provider must also provide the sender with a receipt showing all of the information above, as well as the promised date of delivery, the name and telephone number or address of the designated recipient, a statement about the sender's error resolution rights, contact information for the remittance transfer provider, and contact information for the remittance transfer provider's primary regulator and the Consumer Financial Protection Bureau ("CFPB"), as well as a toll-free number established by the CFPB. We believe the requirement that a provider supply a promised date of delivery is very problematic. Remittance transfer providers are in no position to give a precise date of delivery as they do not control the actions of the foreign banks that will be providing the monies to the recipients.

Under the Proposal, banks and credit unions are only required to provide a "reasonably accurate estimate of the foreign currency to be received" if the transfer is conducted through a deposit account that the sender holds with the bank or credit union and the bank or credit union is unable to know the exact amount of foreign currency that will be received.[4] However, this safe harbor would sunset on July 20, 2015. We strongly believe that this safe harbor should be permanent as to do otherwise would be very burdensome because provider banks do *not* know the net amounts to be received by the recipient as they do not know the specific amount of fees to be charged by the foreign banks. We note that the provider banks already provide the senders with the specific amount of their provider fees and the exchange rate.

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[3] This disclosure must be expressed in the currency into which the funds will be exchanged. This disclosure would be provided when the sender requests a remittance transfer and before the sender makes any payment.

[4] All remittance transfer providers, bank and non-bank, may provide estimates for those countries where local law or other circumstances do not permit the provider to determine a precise exchange rate.

The FRB has proposed model forms for the required disclosures, and also has proposed that remittance transfer providers may provide the initial "pre-payment" disclosure and the receipt at the same time, prior to payment, as a combined disclosure. The disclosures must be provided to the sender clearly and conspicuously, in writing and in a form that the sender can keep. Disclosures must be provided in English *and* in each of the foreign languages principally used by the remittance transfer provider) each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services initiated, *or*, if applicable, in the foreign language used by the sender to conduct business with the remittance transfer provide provided this language is used by the provider in its advertisements, solicitations, and marketing. The Dodd-Frank Act required that disclosures must be provided "in each of the foreign languages principally used by the remittance transfer provider." We believe it is critical that this disclosure language requirement relate to the language utilized by the provider's employee or the language utilized by the provider in its advertisements or solicitations and *not* the sender's language. Otherwise, the translation cost will effectively prevent, or increase, the cost of remittances. For example, a Texas bank with a branch office on the Texas coast might be required to provide a disclosure in Vietnamese based simply on the fact that the sender's remittance is to Vietnam and/or the sender speaks primarily Vietnamese even if the bank's employee does not speak Vietnamese or the bank does not utilize the Vietnamese language in any of its advertisements, solicitations, or marketing. We believe the Proposal's approach, as is, is reasonable and support the flexibility this disclosure provision gives remittance transfer providers.

The proposal would allow electronic disclosures, as long as they are in a form that may be retained by the sender, where the sender requests the transfer electronically. In addition, the proposal would allow verbal disclosures for telephone transactions. We believe these requirements are reasonable as they give remittance transfer providers some flexibility in providing the required disclosures.

Error Resolution Procedures

The FRB's proposal sets forth error resolution procedures that would take the place of the EFTA's existing error resolution procedures for electronic funds transfers.[5] Providers would be required to provide senders with a notice of their dispute rights. Under the proposed rule, if a remittance transfer provider receives notice that an error occurred from a sender within 180 days of the promised delivery of the remittance transfer, the provider must, within 90 days, conduct an investigation and report the results of the investigation to the sender within three days of completion. Where the provider determines that an error has occurred, the provider would be required to offer the sender the option of obtaining a refund or making available to the designated recipient the funds necessary to resolve the error. The provider would only be required to refund fees where the provider failed to make funds available to the designated recipient by the date of availability specified in the receipt or combined disclosure.

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5 *See* EFTA §§ 908 and 909 (EFTA error resolution and unauthorized transaction provisions).

However, we are concerned that these error resolution procedure requirements place an unreasonable burden on the remittance transfer providers who cannot, with any certainty, provide a specified date of availability as they do not control the actions of the foreign banks that process the wire transfers. It would be more reasonable and appropriate for the final regulation to permit providers to supply an estimated date of availability with no liability imposed on the provider for a foreign bank's failure to provide funds to a beneficiary by the estimated date.

Liability of Agents

The FRB proposed the following two alternative approaches to address the issue: of remittance transfer providers acting through agents. Alternative A: "A remittance transfer provider is liable for any violation of [the proposed rule] by an agent when such agent acts for the provider." *Or*, alternative B: "A remittance transfer provider is liable for any violation of [the proposed rule] by an agent when such agent acts for the provider, unless: (a) The remittance transfer provider establishes and maintains written policies and procedures designed to assure compliance with [the proposed rule] by its agents, including appropriate oversight practices; and (b) The remittance transfer provider corrects the violation to the extent appropriate, including complying with the error resolution procedures set forth in [the proposed rule]."

The qualified vicarious liability of Alternative B is preferable for providers, and also makes sense from the consumer's perspective, to the extent that it encourages the provider to develop procedures to supervise agents and to correct any errors caused by an agent. In addition, because the EFTA provides for civil liability to private plaintiffs,[6] as well as criminal liability,[7] any extension of vicarious liability to remittance transfer providers needs to strike a careful balance to avoid discouraging the use of agents that can frequently reach senders of remittance transfers more effectively and fulfill services more efficiently than centralized providers of remittance transfer services.

Thank you for your consideration.

Respectfully,

Dennis E. Nixon
President

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[6] *See* EFTA § 916.
[7] *See* EFTA § 917.