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Proposal: 1419 (RIN 7100-AD76) - Reg E - Electronic Fund Transfer

Subject: Reg E - EFT

Comments:

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Comments:

I am writing on behalf of Viamericas Corporation, and agent based money transfer service operating in 30 of the United States, and serving the Latin America immigrant community in those states. We appreciate the opportunity to comment on the proposed regulations. While we fully support the regulatory intent to provide consumers with greater transparency, reliability and accountability from their money transfer operator (MTO), we also believe that the there are several issues in the proposed regulations which pose significant operational issues for the industry, in which the operational burden on small businesses far outweighs any realistic benefit for the consumer, and in some cases will have unintended - and negative - consequences for the consumer. Our specific comments follow: Right to Refund: In general, we question why the statutory mandate to the Board to refund riles was taken to the extreme of creating a right to cancel an order, rather than fair rules for the processing of refund claims for orders that go unclaimed. The rule is creating a right to cancellation, not a right to refund. While is true that in some areas of consumer financial transactions the law has evolved to provide a period of time in which a consumer can change his or her mind, those rights exist (and are appropriate) in major financial transactions - like a mortgage - where a significant financial commitment extending over a long period of time is involved. To apply this kind of statutory right of cancellation in a consumer financial transaction involving fees averaging $10 is very questionable. Remittance fees have lowered over the last several years because of efficiency gains and competitive pressures in the industry. This kind of regulation imposes a huge efficiency drag on the processing of remittance transactions. Specifically, how is the proposed rule expected to work, operationally? If a customer has an absolute right to demand a refund until the end of the day after they place the order, various questions arise: a. Can a customer opt out? Otherwise does the order need to be held up until the refund period ends? b. If exchange rates improve (more local currency per dollar) after a send is made, does a customer have the right to cancel an unpaid transaction, get the fee back, and immediately place a replacement transaction? Is that fair to the MTOs? Has it been considered that to adjust for that risk MTOs may need to widen ALL exchange rate margins in order to compensate for the free currency option that this rule is giving all customers? c. An exception to the obligation to refund is provided if the order has already been paid, but when? Does the three day period provided (during which the MTO must make the refund) apply here? If, for example, the order is placed at noon, the refund is requested at 2pm and the order is paid out at 2:01 pm, is that a violation? Is the MTO required to refund fees in that scenario? Suggestions: Consumers should be allowed to opt out of this rule, so as to allow those consumers that prioritize speed of the transaction over a right to change their minds about the transaction can be served as they wish to be served. MTOs should not be required to refund fees if a refund request arises due to no fault of the MTO. The principal amount of any refund should be reduced if the exchange rate has changed such that the committed amount of local currency, when reconverted to dollars at the time the refund is requested at the rate applicable to a new order to that payer from that agent on that day would yield fewer dollars than the original principal amount. The rule should clarify that if an order is paid out during the three day window (which should be banking days, not weekend days, because many payers are banks, and are not open on weekends even if the MTO is), fees do not need to be refunded even if the cancellation request is "timely." 2. Tax disclosure The proposed rules require MTOs to disclose all taxes that might be applied on the payment of the order. i. Is there ANY other industry that is required to monitor and build into real-time transactions all national, state and local taxes across the world? This is a huge operational burden, with questionable value to the consumer. Consumers than need to send a remittance will do so regardless of the taxes imposed, and they will know very well what those taxes are. There is no opportunity to comparison shop taxes. How are we to deal with "tax-like" charges that are imposed on certain types of payouts, but not others?

Suggestion: The requirement to disclose taxes on remittance payments should be dropped as imposing burdens far greater than the benefit it creates. 3. Error correction a. The proposed rule provides that a fraudulent pick-up of an order is an "error" giving rise to error resolution rights for the sender in the United States. This will mean that the qustion of whether the person picking up the order was authorized to do so or not authorized to do so will need to be determined in the United States, while all of the evidence necessary to resolve that issue (the copy of the ID used, the testimony of the teller making the payment, etc.) will be in the payment country. How will this work, in practice? This an invitation to "friendly fraud", in the form of claims that orders were picked up by unauthorized people, when the pick-up truly was authorized. b. The proposed rules provide that if a customer makes a mistake in their order information, they have to be allowed to correct that error for no additional charge. In fact, those orders are the most expensive orders for MTOs to handle, operationally. How is it fair to the industry to mandate cost free error modification in cases where the customer's own mistake has caused the problem? Again, this rule is imposing a large efficiency drag on an industry that has passed large efficiency gains on to the consumer in the form of lower pricing. Suggestion: An alleged fraudulent pickup should not be an "error." The recipient has recourse against the payer in the receive jurisdiction, which is where the facts relating to whether the pick-up was or was not fraudulent will reside. A change to an order required by mistaken informartion provided by the customer should not be mandated to be cost free. Let that be a competitive differentiation issue, and require companies to disclose whether modifictions will carry a fee. 4. Disclosure of when the order will be available for pickup a. Many payment networks have offices that operate different days (i.e. a bank that has 100% of its branches open on Monday-Friday, 50% on Saturday and 10% on Sunday). If a transfer is placed on Saturday to be paid at that bank, how is the MTO to disclose when it will be available, since that will depend on what branch the order is claimed at? b. How should hours of operation be handled with respect to the date by which the order will be available? c. Some orders are delayed or stopped for compliance reasons, when greater information is required to allow the order to proceed. In those cases, the speed with which the customer provides the additional information determines the speed of availability. The carve-out on liability for situations where the delay is caused by compliance with applicable law should be drafted broadly, so as to not punish MTOs that apply normal, prudent compliance processes.

Suggestions: Some latitude should be built into the "available by" disclosure to anticipate that some branches of a multi-location payer may not be open on a given day, or may have different hours of operation. A broad compliance based exception is necessary here. 5. Total cost disclosure a. The proposed rules go to great lengths to require that the total cost of the transaction be accurately disclosed. In the case of internet originated transactions, is the MTO required to tell the remitter what fees the remitter's bank will impose on the payment method the remitter is using? For example, if a consumer uses a credit card, is the MTO required to disclose whether or not the issuing bank will impose a cash advance fee on the transaction? 6. Non-traditional electronic remittances a. Do the rules cover cross border payments that are made in something other than currency, such as cellular phone minutes (which may or may not have monetary value) or goods and services? If such a payment is being made for more than the $15 minimum established in the proposed rule, is it to be treated as a remittance transfer, with disclosure of the exchange rate being applied? We appreciate the opportunity to comment.

Thank you

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