July 20, 2011

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

Re: Docket No. R–1419 / RIN No. 7100–AD76

VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the Federal Reserve Board's (the Board's) proposed regulation to implement the remittance transfer requirements under Regulation E, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank Act) amendments to the Electronic Fund Transfer Act (EFTA). MCUL is a statewide trade association representing 95% of the credit unions located in the State of Michigan.

MCUL believes that compliance with the details of this proposal would be nearly impossible and otherwise add substantial delays and costs to this service. Because of this, MCUL believes consumers would be severely harmed, as financial institutions, especially smaller ones, will undoubtedly give serious consideration to dropping a valuable service in order to avoid the consequences of non-compliance. MCUL urges the Board to take takes the points addressed in this letter into serious consideration when deliberating the passage of a final rule.

Discussion

Designated Recipient

The Board solicited comment on whether there are instances where a sender might only give the remittance provider a recipient's e-mail address and therefore the remittance provider would be unable to determine the location where funds are to be received. We believe this to be the case. And due to the regulatory mandates outlined in the proposal, MCUL does not believe that for transmittals employing this process currently, that such a method would continue to be an acceptable and efficient method of transmitting funds. This scenario highlights the illogical nature of this proposal. Parties who wish to transmit funds using an e-mail address would be *prevented* from doing so if the sender does not know the exact location of where the funds will be accepted, because it would result in the remittance transfer provider being unable to provide an accurate disclosure of the exchange rate at the time of transmittal.

General Definition

Under the proposed rule, the term "remittance transfer" would apply regardless of whether the transfer is an electronic funds transfer (EFT). This would include online bill payments to recipients abroad in the definition of a remittance transfer subject to Regulation E. The Board solicited comment on whether it should exempt online bill payments made through the sender's institution, and specifically preauthorized bill payments, from the rule, "as it could be challenging to provide timely disclosures." MCUL strongly agrees that requiring online bill payment disclosures would be challenging. Additionally, MCUL does see how treating an online bill payment to a foreign recipient as a remittance transfer is beneficial to a consumer, as the consumer could be forced to wait until accurate information required by the disclosures could be obtained and provided in order to proceed with the transmission of the funds. Such a treatment would also stifle the opportunity for consumers to make pre-authorized, periodic online payments to foreign recipients. MCUL believes these potential delays would render online bill payments to foreign recipients useless as a means of expediting payments. Therefore, MCUL strongly urges the Board to exercise its authority under the EFTA by removing online bill payments from coverage under the remittance transfer final rule.

Application of the EFTA; Relationship to Uniform Commercial Code

Article 4A of the Uniform Commercial Code provides that it does not apply to "a funds transfer, any part of which is governed by the EFTA." With the mandated inclusion of various remittance transfers under the EFTA and its related regulations, consumer wire transfers will no longer be provided the protections of UCC Article 4A. MCUL agrees with the Board that "one consequence of covering remittance transfers under the EFTA could be legal uncertainty for certain remittance transfer providers." While MCUL understands that the inclusion of consumer wire transfers under the EFTA was required by the Dodd-Frank Act, MCUL urges the Board to use its rulemaking authority under Reg E, to provide an effective date that will allow sufficient lead time for the states to amend their respective UCC provisions under Article 4A in an effort to restore its protections.

Disclosures

"Clear and Conspicuous" Standard

The proposal requires written and electronic disclosures to be "clear and conspicuous" and they will be considered so if they are "readily understandable" and "the location and type size are readily noticeable to senders." Oral disclosures are permitted and would be considered clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them. These standards are not unfamiliar to financial institutions, however, MCUL urges the Board also establish in any final rule a "reasonable person" standard when determining whether a given disclosure is, in fact, "clear and conspicuous."

Written and Electronic Disclosures

The Board requested comment on how the requirement to provide electronic disclosures in a "retainable form" could be applied to transactions conducted via text messaging or mobile phone application. MCUL believes that text messaging and mobile phone applications do not easily lend themselves to a provider giving effective "retainable" disclosures required under this proposal. The difficulties are both practical and technical in nature, and similar to providing compliant disclosures for transactions involving the use of a recipient's e-mail address without related destination geographic information.

Prepayment Disclosures

Fees and Taxes

Under the proposed rule, remittance transfer providers would be required to provide the sender disclosures regarding all of the charges that would affect the cost of a remittance transfer, including any applicable taxes that are passed on to the sender. The Board specifically states in the Background to the proposal that "if the sending institution does not have a direct relationship with the intermediary or receiving institutions, it likely does not have knowledge of all fees that might be imposed on the recipient, or when the funds ultimately will be deposited into the recipient's account." Many credit unions do not have such a relationship with the intermediary or receiving institutions thus determining this information would be difficult at best.

It is unfortunate that the Dodd-Frank Act provisions regarding the authority to provide estimates for fee and tax charges expires on July 20, 2015, and that the Board may only extend the temporary estimate provisions for only an additional five years. MCUL believes the unforeseen effect of this limitation will result in remittance transfers ceasing to be an option for credit union members, given the difficulty involved in determining the exact amount of fees and taxes. Alternatively, if accuracy has no flexibility nor allows for good faith efforts, the remittance transfer service will become more costly as providers will necessarily increase their fees to recoup the increase in costs to obtain the information and otherwise mitigate the compliance and legal risks associated with these new burdensome requirements.

The proposed rule would also require a disclosure of the amount of fees and taxes in the currency in which the funds will be made available to the designated recipient. Given that remittance transfers can also be loaded on to a pre-paid card, how would a remittance transfer provider comply with this proposed rule if a sender is not clear about when a recipient would use the funds, or where the recipient would withdraw the funds from the card? In these scenarios, providers could not even provide estimates unless they received sufficient information from the sender. A very logical conclusion would be to discourage current remittance transfer providers from providing pre-paid card remittance transfers unless the recipient was forced to use the card in one location, within a specific time frame, so that the disclosure provided to the sender was accurate as of the time of payment (as required under the proposal). These mandates represent serious limitations to the ease of use of pre-paid cards and MCUL does not see the benefit to consumers given these constraints.

Remittance transfer providers would be required, in disclosing all fees and taxes imposed, to disclose all fees and taxes imposed by "any other party in the transmittal route of a remittance transfer." Due to the fact that many financial institutions especially smaller ones, are completely unaware of how many intermediaries are ultimately involved in a wire transaction, the time required to make these determinations would render many remittance transfers useless for consumers who wish to expedite funds to a recipient in a foreign country.

Receipt

The proposed rule would require a remittance transfer provider to disclose the date of availability of funds to the designated recipient. Providers could not provide an "estimated date." Even the Board anticipated this to be a concern when it stated in the proposed rule that "in some instances, it may be difficult to determine the exact date on which a remittance transfer will be available to a designated recipient. For example, ***an international wire transfer may pass through several intermediary institutions prior to becoming available at the institution of a designated recipient, and the time it takes to pass through these intermediaries may be difficult to determine***" [emphasis added]. MCUL agrees with the Board, and submits that this reality places remittance transfer providers in an untenable position as compliance with a provision as proposed would be nearly impossible. U.S.-based remittance transfer providers, especially smaller institutions, would have very little to no control over their foreign counterparts, one reason being that such foreign countries are not bound by U.S. laws.

MCUL urges the Board to keep the concern above in mind when finalizing its rule regarding the date of receipt, as well as the disclosure of all fees and taxes imposed. If a remittance transfer passes through several intermediary institutions, it will be just as difficult to determine all applicable fees and taxes as it will be to determine the date the funds will be made available to recipients. There is a high likelihood that many current remittance transfer providers will choose to cease offering this service in order to avoid non-compliance. The only other "safe" alternative would be disclose a date of receipt that is well beyond what is reasonable in order to ensure that the funds will in fact be available. Such a scenario would make the receipt date disclosure meaningless, and thereby lessen the attractiveness of what is currently a very useful means of transmitting money to recipients in foreign countries.

Disclosures Accurate When Payment is Made

Under the proposed rule, the disclosures provided to the sender must be accurate when the payment is made. The Board provides the example where this might not happen: that if a sender is provided a pre-payment disclosure and then decides to go shopping before making the payment, the provider must provide new disclosures to the sender if the information provided has changed in the intervening time. However, what is not clear is what would happen in the event the information changed between the time payment is made and the time that payment has cleared. The proposal states that the EFTA does not require that the information provided in the required disclosures be guaranteed for any period of time. Therefore, MCUL urges the Board to allow remittance transfer providers to include this "no-guarantee" statement in the disclosures provided to senders in order to protect providers from having to bear any additional costs associated with changed information while a payment has cleared.

Estimates Under the Temporary Exception

The proposed commentary provides examples for when "estimates" of fees, taxes, exchange rates and the amounts the recipient will receive can be provided, as well as when the temporary exception would not apply. MCUL believes the Board understands that in many cases, remittance transfer providers will not have the exact information to provide senders in a disclosure, but believes this example provides the rule, not the exception, for how remittance transfers are processed. MCUL urges the Board to write the rule in a way that reflects the examples provided in the commentary to the temporary exception provisions. In other words, any pre-payment disclosures would be required to be accurate in the event the provider has the specific knowledge regarding the exchange rates, fees, etc. In the event, for reasons beyond the provider's control, this information cannot be obtained, estimates would be acceptable.

The Dodd-Frank Act provided the temporary exception until July 15, 2015 in an effort to avoid "the immediate disruption of remittance transfer services by insured institutions using international wire transfers. The exception gives these financial institutions time to reach agreements and modify systems to provide accurate disclosures." MCUL does not believe this additional time reaches the heart of this very real problem, as provider counterparts in foreign countries are not bound by U.S. law and have no incentive to enter into such agreements.

Estimates Under the Permanent Exception

Under the permanent exception, estimates could be provided if a remittance transfer provider cannot determine exact amounts, either because the laws of the recipient country are a barrier to such a determination, or the laws of the recipient country prevent exact amounts from being determined because the methods by which transactions are made do not easily allow for such a determination. While the rule provides that remittance transfers sent via *Directo a Mexico* would currently qualify for the proposed permanent exception, what is not clear is how a given remittance transfer provider would be expected to have knowledge of international law well enough to know in what situations this exception could be utilized.

Procedures for Resolving Errors

Under the proposed rule, the definition of an "error" would include the following circumstances:

- The amount paid by the sender differs from the total transaction amount stated in the payment receipt (or combined disclosure);
- The failure on the part of the provider to disclose all of the fees to be paid by the sender;
- The failure on the part of the provider to accurately disclose the amount to be received by the recipient;
- The failure on the part of the provider to make the transferred funds available to a designated recipient by the date of availability stated on the receipt (or combined disclosure); and
- Circumstances in which a person other than the designated recipient of the transfer fraudulently picks up a remittance transfer in the foreign country.

MCUL strongly disagrees with the definition of "error" in the proposed rule. Given that several correspondent institutions are often needed to complete the transfer of funds to a designated recipient, and on a practical basis, a provider has little to no knowledge of the fees charged by these additional correspondent institutions or any control over when a designated recipient will receive his/her funds, the result of this proposed definition would be that most remittance transfer providers would routinely incur penalties as the resolution of these errors would necessitate a refund of ***all*** of the fees charged to the sender. Foreign remittance transfers is a valuable service to many credit unions whose field of membership includes underserved populations that have migrated to this country with other family members to care for outside this country. MCUL believes this method of rectifying errors is likely to result in significant financial loss over time for providers despite good-faith attempts to provide accurate disclosures. Further if the designated recipient was in fact in receipt of the funds, despite disclosure errors, loss of all fees to the provider for the errors above would constitute an unfair and unbalanced outcome for the provider. In addition to the costs involved in determining accurate information, smaller institutions, rather than operate this service at a loss, will likely choose to discontinue this valuable service to their respective membership.

Additionally, the risk of identity theft committed by an individual in a foreign country should not be borne by a U.S. provider that has processed a lawful remittance transfer on behalf of a sender that has voluntarily initiated it. Once a remittance transfer exits the borders of this country, a U.S. provider does not have either the control or the jurisdiction over any foreign provider.

Conclusion

Under the proposed detailed rules, remittance transfer providers would be taking substantial risks in initiating a remittance transfer for a sender. As a result, the number of providers will gradually diminish leaving this valuable service to larger “big box” providers whose substantial operations and global networks will better support more cost-effective processes. Smaller institutions including credit unions located in ethnic neighborhoods of larger metropolitan areas or rural agricultural areas and that serve constituencies that distrust larger financial institutions will likely turn away from this appealing service because it will be too costly to implement, too labor intense for their small staffs, and too expensive due to the risks and penalties of non compliance.

MCUL believes the Board understands the realities involving remittance transfers and has been placed in an uncomfortable position of having to prepare regulations based on legislative mandates that present unforeseen and unintended consequences. MCUL strongly urges the Board to exercise its authority under the EFTA to ensure that the remittance transfer service does not become extinct or the sole province of a few large providers by issuing a final rule in which good faith providers can realistically comply without incurring undue liability risk.

MCUL appreciates the opportunity to provide comment on this proposed rule.

Sincerely,

Michael J. DeFors
VP Regulatory Affairs