BANKERS' BANK
NORTHEAST

July 22, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets. N.W.
Washington, DC 20551

via: *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*

RE: Docket No. R-1419; Regulation E
RIN 7100-AD76

Dear Ms. Johnson:

We are pleased to submit a comment letter regarding the proposed amendments to Regulation E (the "Proposed Rule") which implements the Electronic Funds Transfer Act ("EFTA"). Bankers' Bank Northeast ("BBN") recognizes that the Proposed Rule is required under Section 1073 of the Dodd-Frank Act ("the Act") and contains new protections for consumers who send remittance transfers to consumers or entities in a foreign country. The final rule will impact how the community depository institutions operate, if at all, in the international arena of remittance transfers including international wires and ACH. *In our opinion, the proposed changes will have extreme detrimental effects on community depository institutions and raise significant policy concerns for both our business model and our client institutions. The proposed changes, if finalized, could potentially force community depository institutions out of the international wires and international ACH business entirely.*

BBN, a state chartered, FDIC insured and Federal Reserve member bankers' bank located in Glastonbury, Connecticut provides correspondent services to over 200 federally insured financial institutions in New England and New York State. Fifty-six of our client institutions are also investors in their bankers' bank. We service both community banks and credit unions (aka "depository institutions").

Through the direction of Section 1073 of the Dodd-Frank Act, regulatory bodies have been instructed to add a new section to the EFTA, Section 919, which creates protections for consumers who send remittance transfers to designated recipients located in a foreign country. In addition, the Act requires that remittance transfer providers give senders of remittance transfers certain disclosures (pre-payment and receipt), including information about fees and taxes, the applicable exchange rate, the amount of currency to be received by the recipient, and the date of availability. In addition, the Act provides error resolution rights for senders of remittance transfers and directs the Board to promulgate standards for resolving errors and recordkeeping rules as well as rules regarding appropriate cancellation and refund policies.

The Board has requested comment on the proposed changes and we have provided our thoughts and concerns below.

I. As stated in the proposed rule commentary, "The term 'remittance transfer' typically describes a transaction where a consumer sends funds to a relative or other individual located in another country, often the consumer's country of origin. Traditional remittance transfers often consist of consumer-to-consumer payments of low monetary value." There are several methods for sending remittance transfers. In accordance with the commentary provided, International Wires Transfers and International ACH transactions conducted by insured depository institutions qualify for, and are to be subject to, the proposed changes. **We contend that International Wire Transfers performed by federally regulated insured depository institutions should be excluded from the definition of 'remittance transfer' for the purposes of these regulatory changes.**

As the commentary explains in numerous sections, and practically speaking, the smallest depository institution (aka community depository institutions) will not be able to comply with the proposed rules. Community depository institutions do not have the access, ability, or manpower to obtain the required information to make the pre-payment disclosures.

Historically speaking, the smallest depository institutions do not perform international transactions themselves given the size of their institutions and the complexity of international foreign exchange activities. The smaller depository institutions will maintain a relationship with a larger correspondent or third party service provider to perform these transactions. When utilizing a correspondent the sending depository institution has no way of knowing the information needed, in advance, to comply with the requirements of the pre-payment disclosure. The sending institution(s) have no way to determine how many intermediary institutions will be involved in the transaction; therefore, no one can predict the fees which will be assessed, the time it will take for the funds to be delivered, the exchange rate on the date of delivery or the final amount to be received by the recipient. As stated in the commentary, "…the two account-holding financial institutions will not communicate directly if they do not have a correspondent relationship. Rather, the sending institution will send funds or a payment instruction to a correspondent institution, which will then be transmitted to the recipient institution directly or indirectly through a series of intermediary institutions…Intermediary institutions along the transmittal route for international wire transfers may deduct fees from the amount transferred…The recipient's institution may also deduct a fee from the recipient's account for converting the funds into local currency and depositing them into the recipient's account. Further depending on the number of institutions involved in the transmittal route, it may take longer for funds to be deposited into the recipient's account." Also stated in the commentary, "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…Financial institutions also do not always know the exchange rate that will apply to wire transfers. [For wire transfers sent in US dollars] either the first cross-border intermediary institution in the recipient's country, or the recipient's institution, will set the rate. If the sending financial institution does not have a correspondent relationship with these parties, it generally will not be able to determine the applicable rate." Clearly it would be unfeasible for

any depository institution to realistically maintain direct relationships with all of the potential intermediaries needed to perform international transactions in order to be able to determine, even in estimation, the type of information needed to compile the pre-payment disclosure as stated in this proposal. *It is not realistic to expect depository institution to be able to comply with the disclosure requirements as defined in the proposed rule.*

While it is understood that the proposed rule does provide for two exceptions that would permit insured depository institutions to disclose **an estimate** of the required information rather then the actual amount we still feel that this course of action is not appropriate. It is our recommendation that **international wires transfers performed by federally regulated insured depository institutions should be excluded from the definition of remittance transfer for purposes of this regulation.** Currently, depository institutions disclose any information about an international transaction that is known to them and is within their institution's control. To require that these very same institutions provide estimates to customers would be a customer service nightmare setting the institution up for disclosure violation(s) as the information provided would not necessarily be accurate and would only be a "best guess". The idea of 'estimating' this information for disclosure purposes not only creates systemic risk with the increase to reputation, legal and compliance risk within the process but has the potential to increase losses for community depository institutions.

Depository institutions are already strictly regulated and while we speculate that these changes are mostly aimed at remittance service providers that are not federally regulated (aka money transmitters) the community banking and credit union industries will endure significant negative impact as a result of these changes. *Should these proposed rules be finalized as they are written it is very likely that community depository institutions will cease offering international transactions to their customers*! Such a move will only force these 'valued' customers to utilize the services of their competitors or the very businesses these changes were aimed at regulating. Furthermore, should these changes be finalized they are providing a competitive advantage for the largest banks who by nature maintain many correspondent relationships – an advantage community depository institutions do not have. *Albeit a financial burden on ALL institutions, these proposed disclosure changes will hit the community depository institutions the hardest!*

In the commentary regarding floating rate products the Board states that "[The Board] recognizes that the result of proposed Sec. 205.31(b)(1)(iv) would likely be that providers will no longer offer floating rate products." The Board should recognize that almost every international wire transaction performed in US Dollars is in essence a floating rate product and that ultimately 'providers' of international wires (aka depository institutions) will need to determine whether they will or can continue to offer these services should the proposals go through as stated. Likely community depository institutions will no longer offer these products and consequently it is only appropriate that the Board recognize that.

The proposed rule states that "[the rule] could have a significant economic impact on small financial institutions that are remittance transfer providers for consumer international wire transfers…As a result, some financial institutions may decide to stop offering international wire transfers to consumer customers." **We strongly agree with this assessment and**

recommend that at a minimum small financial institutions as defined by the Dodd-Frank Act ($10 billion and under) be exempt from the final rules, similar to the exceptions made for other regulations which have come out of the Dodd-Frank Act.

The proposed rule also states that "unless these international wire transfers constitute a high volume of a financial institution's remittance transfer business, or business in general, such a decision is unlikely to have a significant economic impact on the institution…the Board does not believe that small financial institutions are likely to be significantly impacted by the rule." **We strongly disagree with this statement and assessment.** *International foreign exchange is part of a full suite of products and services for community based depository institutions. Providing such products and services is an integral part of their customer base retention plan.* Should 'small' financial institutions be forced out of this business line by unattainable regulatory changes the potential overall effect could be significant to the community depository institutions when viewed as a whole. While international consumer wire transfers are not a primary fee incoming generating service they are part and parcel to the customer relationship. If a community depository institution can no longer offer international wires or international ACH then they will be forced to send their valued customers to their largest competitors giving the too-big-too-fail institutions yet another competitive edge over the community depository institutions.

II. The Federal Reserve Bank product, FedGlobal ACH, allows depository institutions to offer international ACH services to over 35 countries through agreements with private-sector or government entities. Fees have already been negotiated and established for these transactions and the process is highly regulated. **We recommend that FedGlobal ACH transactions also be excluded from the definition of "remittance transfer" given the level of government involvement and regulatory oversight already in place for Fed Global ACH.**

III. The Board is also soliciting comments on whether to exempt online bill payments made through the sender's institution, specifically preauthorized bill payments, from the rule, as it could be challenging for institutions to provide timely disclosures. **We recommend that online bill payment transaction also be exempt.**

IV. The Board requests comment on any and all aspects on the right to cancel a remittance transfer. The commentary regarding 'Procedures for Cancellation and Refund of Remittance Transfers' notes that "remittance transfers sent by ACH or wire transfer 'generally' cannot be cancelled once the payment order has been accepted by the sending institution. The addition of a prolonged cancellation period would present significant practical difficulties for remittance transfers sent by ACH and wire transfer. Once a transfer is originated there is no guarantee that the funds can be cancelled, recalled, or retrieved. Imposing a time-frame beyond the same business day will not only serve to further delay the receipt of the funds to the recipient in the foreign country and such a delay may change the amount received due to market and rate fluctuations. Under such circumstances, banks or credit unions will likely wait to execute the payment order until the cancellation period has expired to originate the transfer. Further compounding this is the proposed changes whereby sending institutions would be required to refund **ALL** fees to the sender upon the sender's timely request to cancel a transfer of funds. Under the proposed rule, the remittance transfer provider must refund all funds transferred,

including any fees that have been imposed for the transfer, regardless of whether the provider or a third party, such as an intermediary institution, imposed the fee. In our opinion, depository institutions will likely hold the transfer until after the cancellation period expires so as to not have to contend with these issues. Otherwise the sending depository institution would be liable for any fees assessed on the transaction. Such a ruling would end up being a very costly burden on the sending institution that is not at fault. **We recommend that the timeframe for cancellation be shortened to the same business day the transaction was originated and the requirement for the refund of fees be changed to allow reasonable fees to be taken by the transacting institution as well as the other institutions who may have been involved in the transaction up until the point the transaction was cancelled so as not to place undue burden or loss on the sending financial institution.**

In summary, we believe the proposed changes will have a significant negative impact on the community depository financial institution industry. We recommend that international wires and FedGlobal ACH be excluded from the definition of remittance transfer for the purposes of these changes. Furthermore, we recommend that small depository institutions as defined by the Dodd-Frank Act ($10 billion and under) be exempt from these regulatory changes. Lastly, we recommend that the proposed period for cancellation and refund be shortened to the same business day that the transaction was originated and that reasonable fees may be retained by the parties involved in the transaction up until the point the transaction was cancelled.

Bankers' Bank Northeast appreciates the opportunity to comment on this important proposal. Please do not hesitate to contact me at egr@bankersbanknortheast.com (860-657-4926) or Peter J Sposito at pjs@bankersbanknortheast.com (860-633-5690) with any questions regarding these comments.

Sincerely,

Peter J Sposito
President & CEO

Elissa G Reynolds
Senior Vice President, Operations