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

Via email regs.comments@federalreserve.gov

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:

As President of Independent Bankers of Texas (IBAT), a trade association representing more than 500 banks and 2000 branches domiciled in Texas, I appreciate the opportunity to comment on the FRB's Proposal on remittance transfers, which proposes changes to Regulation E in the implementation of new amendments to the Electronic Fund Transfer Act (EFTA). IBAT was organized in 1974 to promote the interests of independent banking in areas vital to independent banks. Our organization serves independent banks in the largest state on the border with Mexico. The State of Texas has a vibrant international population, including residents with links to all points on the globe. The use of remittance transfers is not limited to our metropolitan areas, as such transfers are also common in our rural areas. Accordingly IBAT and its members have firsthand knowledge of the negative impact some parts of the Proposal would have on our banks and their customers.

Conflict and Confusion between EFTA and U.C.C. 4A

The Proposal contains some changes that add to the conflict and confusion between EFTA and U.C.C. § 4A. As the Proposal's preamble notes, the amendment of the EFTA to include remittance transfers presents a challenging interface with § 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 are a significant number of instances in which a remittance transfer would fall within the definition of a "funds transfer" under U.C.C. Article 4A, except for the fact that Congress inserted the remittance transfer provision into the EFTA. A "funds transfer" under U.C.C. § 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." U.C.C. § 4A does not cover debit funds transfers. Confusion and conflict between the definitions in U.C.C. § 4A and EFTA create difficulty in determining which transactions are included and which are excluded, and whether protections of law apply.

Another point of confusion is that U.C.C. § 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. The redundancy and 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.

Impossible Disclosures

The Proposal requires 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, the exchange rate, and the promised date of delivery.

In Supplementary Information, II., Background, B. Methods for Sending Remittance, the FRB admitted that in most cases the sending institution is unlikely to know, except for the provider's fees, the amount of fees that will be charged to the recipient, nor will they know when the funds will be available for the recipient. Moreover, the FRB indicated that if the sending institution does not have a correspondent relationship with the first cross-border intermediary institution or the recipient's institution, it generally will not be able to determine the applicable exchange rate. Additionally, the FRB indicated that if the sending institution does not have a relationship with cross-border intermediary institutions, the sending institution will not have knowledge of when the funds will be available to the recipient.

Those with experience in this area know that, depending on the receiving country and institution, the amount of time for receipt could be hours, day, week, or months. Funds rarely travel by the same route, so it is impossible to know which intermediary institutions the funds will pass through or what fees and taxes will be charged by intermediaries or the receiving institution. Additionally, exchange rates are a moving target, and it is not possible for a community bank to provide specific information of that nature. Individuals wishing to transmit funds electronically to foreign countries naturally turn to their local banks in order to conduct such transfers. Community banks normally utilize a correspondent bank in the United States for purpose of facilitating electronic funds transfers. It is nonsensical that the FRB has clearly admitted that sending institutions do not have access to such information, but yet the Proposal requires that written pre-payment disclosure of this unobtainable information be provided to the sender.

The final regulation should, at the very most, permit a provider/sending institution 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. Similarly, such an estimate should be sufficient information in regard to the receipt provided to the sender.

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. 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 to the providers. Provider banks do *not* know the net amounts to be received by the recipient as they do not know the specific amount of fees or taxes 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.

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 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 provider 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 increase the cost of remittances, and negatively impact the provider's ability to provide a needed service for customers. For example, a Texas bank with a branch office in West Texas might be required to provide a disclosure in Urdu or some other regional or provincial languages of Pakistan simply because the sender's remittance is to Pakistan and/or the sender speaks primarily Urdu or Punjabi even if the bank's employee speaks only English and the bank does not utilize any Pakistani language in any of its advertisements, solicitations, or marketing. We believe the Proposal's approach, as is, is reasonable and, we 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. 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. 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, as well as criminal liability, 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 this opportunity to comment.

Respectfully submitted,

Christopher L. Williston, CAE
President and CEO