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July 22, 2011

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

RE: Docket No. R–1419 and RIN 7100–AD76

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the nation's federal credit unions, I am writing to provide NAFCU's comments on the Board's proposed changes to Regulation E regarding international remittance transfers. NAFCU supports efforts to provide consumers disclosures regarding remittance transfers; however, the association is concerned with several aspects of the rule. Particularly troubling is the fact that the proposed rule, while applicable to closed and open network systems, appears targeted to the operation of closed fund transfer systems. Consequently, much of the proposal would be difficult to implement for open network fund transfer systems, which virtually all credit unions employ. Specifically, the disclosure regime will be burdensome, if not impossible to meaningfully implement for credit unions or other open network users. NAFCU also has several concerns regarding the proposed cancellation policy and error resolution. Additionally, this letter provides input on three other specific issues upon which the Board requested comment.

Disclosures

The proposal would require remittance transfer providers to provide consumers a pre-payment disclosure that details the exchange rate, applicable fees and taxes and the amount to be received by the designated recipient. Additionally, the proposal requires a receipt for the transaction with the above information as well as additional information regarding the date of delivery. In an open network transfer system, providers have insufficient information to provide accurate details on any of the above mentioned disclosures.

Virtually all of the proposed disclosures may be easy to provide in a closed system but will be exceedingly difficult for credit unions that rely on open network systems to provide. For example, the exchange rate may vary several times a day, making it impossible to accurately disclose. Further, given the cancellation policy in the proposed rule, most providers will choose to wait at least one day before exchanging funds and sending the remittance transfer. Consequently, the exchange rate, by necessity, will be an estimate. Similarly, in an open network system, the provider generally only has a correspondent relationship with the financial institution to which it makes the transfer. However, the funds may change hands several times before reaching the designated recipient. Consequently, providers will not be able to provide

exact estimates of the fees that will be charged in order to carry out the transaction. While it may be somewhat easier to estimate the taxes that will be charged, it is still, by no means, a simple task. Remittance transfer providers currently do not have the resources to track tax law in every country in which it might send a remittance transfer. Of course, when it is impossible to accurately gauge the exchange rate, the fees and the taxes on the transaction it is necessarily impossible to accurately disclose exactly how much money will be made available to the recipient. This is true even in a typical transaction where a sender in the United States might use U.S. dollars (USD) to send a transfer to Mexico, to be picked up in Mexican pesos. However, a recipient in Mexico might have an account designated for USD. Similarly, a recipient in Switzerland might have an account designated for Swiss Franks or the Euro. The remittance transfer provider has no knowledge regarding these matters when it sends the transfer and consequently, no way to accurately gauge the exchange rate. Finally, the remittance transfer provider cannot accurately estimate when the funds will be available for pick-up by the designated recipient. This is not particularly problematic as the provider can simply disclose a date days or weeks after the transaction is requested. However, that likely result hardly seems to further the legislation's proposed goals. In conclusion, the proposed disclosures will be difficult if not impossible for open network users to accurately provide. The Board should reconsider the disclosure requirements for open network systems and/or provide simpler methods to comply.

Exception for Estimates

The proposal does include two exceptions – a temporary exception and a permanent exception – that allow providers to disclose estimates if they do not know the exchange rate, taxes or fees that may apply. The exceptions, however, are of limited use. The temporary exception is problematic for the simple reason that it is temporary and will expire, absent Board action, on July 20, 2015. The permanent exception applies only to remittances sent via international ACH on terms negotiated by the U.S. government and the government of a recipient country. This exception only covers a small number of international ACH services and entirely excludes international wire transfers. Further, as described in more detail below, the bases for making estimates are of limited utility.

While NAFCU appreciates the Board including an exception to the general disclosure rule, the bases for providing estimates are not particularly helpful. The proposal would allow providers to estimate the exchange rate based on one of two methods. First, providers can provide an estimate based on the wholesale exchange rate. Second, providers may estimate the exchange rate based on the most recent exchange rate offered by the person making funds available to the recipient. Neither of these two alternatives will be useful in practice. In the first instance, the designated recipient will likely receive the lower *retail* exchange rate, not the *wholesale* exchange rate, which might lead the sender or recipient to believe an error has occurred. The second method for estimating the exchange rate is very cumbersome as the remittance provider in virtually all cases will not have a relationship with the person or entity making funds available to the recipient. Consequently, in an open network system, the provider will not have easy access to such information.

The proposal also sets forth two methods by which providers may estimate the fees charged by intermediaries. Again, neither method will be particularly helpful in practice. The

first method would require providers to disclose fees based on the provider's most recent transfer to an account at the recipient's institution. Again, providers do not currently track and maintain this sort of information. Further, tracking such information would require a significant amount of financial and technological resources. It our view, the marginal benefit to consumers does not outweigh the substantial costs. This is not to say that consumers should not receive an estimate of the fees they will be charged. However, the Board could allow for reasonable estimates that do not require such a cumbersome method. The second method is also unworkable in an open system as the provider often does not know the exact route the transaction will follow and consequently cannot accurately estimate the fees that will be charged at each step along the way.

Finally, the proposal would permit providers to estimate taxes that will be charged by the nation in which the recipient resides. As a practical matter, it will likely be quite difficult for a provider to accurately estimate the taxes charged in each nation on the globe. The scope and depth of knowledge required to accurately track tax laws across the entire world would likely require great expense with only minimal benefit to consumers.

In order to address these concerns, NAFCU recommends the Board consider setting up a clearinghouse for information that providers can use to make the disclosures. For example, the rule could permit providers to quote an exchange rate based on the most recent publicly available retail exchange rate. The Board could, in turn set up a website that constantly updates that information. Similarly, the Board has the expertise available to provide accurate disclosures regarding the taxes charged by foreign countries for remittance transfers. Remittance transfer providers that use an exchange rate, fees and taxes published by the Board would be considered in compliance with the rule. Even if the Board determines it is not situated to provide this sort of information, the final rule must take into consideration the operational realities of open network fund transfer systems, and the Board should take steps to ensure that its rule does not force all open network users from the market.

Foreign Language Disclosures

NAFCU understands the Board's emphasis on foreign language disclosures and is generally supportive of efforts to require foreign language disclosures if the provider actively markets or solicits customers in a foreign language. NAFCU is, however, concerned that employees may create new foreign language disclosure responsibilities on the part of providers merely by speaking to a customer in a foreign language. An employee's decision to speak to a member in a foreign language should not, by itself, obligate a credit union to provide foreign language disclosures. Additionally guidance on this issue in the final rule would be helpful.

Right of Cancellation

The proposal would permit remittance senderes one business day to cancel a remittance transfer request. In the proposed rule, the Board makes clear that it understands the practical implications of this provision; namely that remittance transfer providers will delay sending a remittance until after the cancellation period has expired. The Board should consider permitting a waiver process for the right to cancel. Given the broad right of cancellation and the error resolution provisions, most providers will establish procedures where transfers, as a matter of

course, are held until after the cancellation period expires. Permitting consumers to waive the right when they wish to expedite the process would further the Board's goal of consumer protection while still providing some flexibility in instances where the sender wishes to have the funds transferred immediately.

Error Resolution

NAFCU is concerned with the provisions regarding errors and error resolution. As a general matter, the proposal places the burden for virtually any error by any party on the remittance transfer provider. For example, under proposed § 205.33, a provider is essentially obligated to permit a sender to send a second transfer at no additional cost even if the error resulted from the sender providing inaccurate information. NAFCU understands the Board's goal in protecting consumers; however, responsibility for correcting errors should be borne by the party responsible.

The above illustration is just the most obvious example of the Board's decision to shift responsibility for virtually all losses on to the provider. However, the provider in an open network system has little if any ability to eliminate or minimize the errors enumerated in the rule. Providers already work with senders to resolve errors that do occur. Often times, providers are able to secure an equitable resolution. Nonetheless, the provider should not be legally obligated to correct virtually all errors, regardless of its own culpability. NAFCU recommends the Board reconsider this portion of the proposal.

Requests for Comment

The Board specifically requested comment on whether the rule should cover automatic bill payments, the compliance date and whether federally chartered entities should be required to disclose information regarding state regulatory agencies.

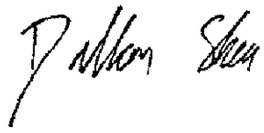
The rule should exempt automatic bill pay transactions. While an automatic bill payment may plausibly be within the scope of the rule, it does not appear that Congress intended to target such transactions when it passed section 1073. Further, covering automatic bill payments would provide consumers only marginal, if any, benefit.

NAFCU recommends a compliance date of at least eighteen months from the time the final rule is published. If the final rule closely reflects the proposed rule, remittance transfer providers will need to significantly alter systems and operations in order to comply. The considerable burden that would result from the proposed rule requires significant advance time to ensure compliance. Further, financial institutions are simultaneously being required to comply with a host of other new regulations pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Consequently, in determining the time necessary to make the changes required pursuant to this rule, the Board should also consider the multitude of other regulatory amendments that financial institutions are currently implementing as required by the Dodd-Frank Act.

Finally, federally chartered and regulated institutions should not be required to provide disclosures regarding state regulatory authorities. Requiring disclosure of state regulatory authorities would provide no benefit and may actually delay resolution as state agencies in many – if not all – cases would have no authority over the federally regulated institution.

NAFCU appreciates the opportunity to share our thoughts on the proposal. If you have any questions or concerns, please feel free to contact me.

Sincerely,



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