April 22, 2013

Via Electronic Delivery

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Re: Consolidated Reports of Condition and Income (FFIEC 031 and 041); Proposed Remittance Transfer Reporting; OMB Control Number 7100-0036

The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, The Financial Services Roundtable, and the Independent Community Bankers of America (collectively, the "Associations")[1] respectfully submit[2] this comment letter in response to the proposal by the Board of Governors, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (together, the "Agencies"), published in the *Federal Register* on February 21, 2013 (the "Proposal"),[3] to make certain changes to the Consolidated Reports of Condition and Income (the "Call Report"). Specifically, in this letter the Associations provide comments regarding the proposed remittance transfer reporting (new Item 16) in Schedule RC-M. We note that some of the Associations also have submitted separate letters on certain other aspects of the Proposal.

I. Summary

The Proposal would add a new Item 16 to Schedule RC-M of the Call Report, which is intended to assist the Agencies with their supervisory responsibilities related to the new consumer protection regime created by Section 1073 of the Dodd Frank Act and its implementing regulation, Subpart B to Regulation E[4] (the "Rule"). Item 16 would also provide metrics by which the Agencies and the Consumer

[1] Information regarding each of the Associations is provided in Appendix A to this comment letter.
[2] The Proposal states that all comments will be shared among the Agencies. Hence, these comments are also intended for the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.
[3] Proposed Agency Information Collection Activities, 78 Fed. Reg. 12141 (Feb. 21, 2013).
[4] 12 CFR 1005.30 *et seq.*

Financial Protection Bureau (the "Bureau") can gauge the impact of the Rule on the remittance transfer market.

In particular, Item 16 would capture information about an institution's remittance transfer activities, including whether the institution falls under the "safe harbor" for entities that do not send transfers "in the normal course of business,"[5] the historical and current "mechanisms" that institutions use to send remittance transfers, the volumes and values of remittance transfers an institution sends or participates in, and the number of times an institution uses the temporary depository institution exemption[6] (the "Temporary Exemption") when it provides disclosures pursuant to the Rule. The Agencies propose to introduce this new reporting with the June 30, 2013 Call Report but have noted that, due to the fact the final Rule has not yet been issued, it may be appropriate to delay such introduction to the third quarter of 2013 or later.

Having reviewed and considered the Proposal's remittance transfer reporting requirements, the Associations respectfully request that

- the remittance transfer reporting be conducted through an annual or semi-annual survey, which applies to all providers of remittance transfer services, rather than through the Call Report;
- with respect to the proposed volume, value, and Temporary Exemption reporting in Item 16(e), *the comment period* to respond to such reporting be extended until at least two quarters after the effective date of the final Rule;
- institutions only be required to report remittance transfers for which they are the remittance transfer provider;
- the report or survey refer consistently to "remittance transfers" and incorporate the Rule's definition of the term; and
- the questions regarding the systems that institutions use to "process" international wires and ACH be revised to identify the systems used by the remittance transfer provider to *initiate* such payments.

II. Discussion

A. Volume, Value, and Temporary Exemption Reporting is Better Suited to a Survey than a Call Report

The Associations agree with the Proposal's assessment that there is currently no "comprehensive industry data regarding trends in the [open network] remittance transfer market,"[7] i.e., the market provided by insured depository institutions primarily through their wire and ACH capabilities. We further continue to be concerned that the Rule could negatively impact this vital consumer market. Hence, we support the collection of data that will inform the Agencies, Bureau, and the industry about the actual impacts of the Rule.

[5] 12 CFR 1005.30(f)(2).
[6] 12 CFR 1005.32(a).
[7] 78 Fed. Reg. 12141 (Feb. 21, 2013).

However, we think this market data is better suited to a regular and pre-defined survey rather than a Call Report for three reasons. First, not all institutions submit Call Reports. Specifically, there are branches of certain foreign institutions that will act as remittance transfer providers but do not submit Call Reports. Similarly, money transmitters that act as remittance transfer providers do not fall under the Call Report regime. A complete picture of the US remittance transfer market can only be achieved if all remittance transfer providers are required to report the same data.

We note that the Bureau can use its reporting authority to require surveys of "larger participants" in the money transmitter market as well large institutions that fall under its jurisdiction. The Agencies could likewise use their reporting authority to require surveys of smaller institutions. Additionally, the Bureau and Agencies should work with state authorities to require the survey be completed by smaller money transmitters that are registered under state money transmission or sale of checks laws. We believe that this holistic approach to remittance transfer reporting will better serve the Bureau and Agencies' goal of monitoring the remittance transfer market and also create an equitable reporting regime that applies to all remittance transfer providers.

Second, the Associations are concerned that the remittance transfer reporting data is not something to which CFOs and directors will be able to attest, as mandated by the Call Report, for some period of time. This is because, as explained in Section B below, most institutions, if not all, do not currently have the reporting systems in place to enable them to capture the volume, value, and Temporary Exemption data in an automated, reliable way. Further, we strongly believe that institutions will need "live" experience with their remittance transfer compliance systems before they will be comfortable reporting with certainty the volumes and values broken out by payment mechanism.

Third, we think that quarterly reporting of such data is not necessary as market trends can be identified by annual or semi-annual data. We, therefore, think that the Agencies and the Bureau should re-propose the content of Item 16 as a mandatory annual or semi-annual survey[8] rather than as an item on the Call Report.

B. Institutions Need More Time to Determine How They Will Comply with the Proposal's Reporting of Volumes, Values, and Use of the Temporary Exemption

Proposed Item 16(e) lists five systems by which remittance transfers may be sent: international wire, international ACH, proprietary systems owned by an institution, proprietary systems owned by other entities, and "other," (together, the "Mechanisms"). Item 16(e) would require that institutions report for each of the Mechanisms the number and dollar value of remittance transfers as well as the number of remittance transfers for which the institution applied the Temporary Exemption during the reported quarter. The Agencies have proposed that reporting would begin with the June 30, 2013 Call Report

[8] We believe that, like other surveys conducted by the Agencies and Bureau, an individual entity's data provided in response to the mandatory remittance transfer survey would be confidential and only aggregated data would be shared publicly.

though they have noted that the timing of the final Rule may justify a later date to begin the reporting.

The Associations believe that a later date to begin the reporting is justified because it is highly unlikely that the final Rule will become effective before June 30. Thus, there will be no remittance transfers to report. Further, for the reasons explained below we think that the reporting should not begin until at least three full quarters after the final Rule becomes effective.

It will be extremely problematic for institutions to begin reporting remittance transfer volumes, values, and use of the Temporary Exemption beginning June 30, 2013 or within the first quarter of the date the final Rule becomes effective. While institutions and the payments industry have worked very hard for more than a year to implement new technology, systems, processes, and legal arrangements to comply with the disclosure and error resolution requirements of the Rule, these implementation efforts do not necessarily enable institutions to report remittance transfer volumes, values, and use of the Temporary Exemption. In fact, because such reporting is not required or anticipated in Section 1073 of the Dodd Frank Act or in any versions of the proposed Rule that have been published to date, institutions have not designed their remittance transfer systems to support the reporting. Hence, we believe most, if not all, institutions will have to design, implement, and test changes to their systems to enable the volume, value, and Temporary Exemption reporting.

Further, as the final Rule has not yet been issued, the Associations emphasize that institutions do not yet know what their precise remittance transfer disclosure and error resolution requirements will be and, hence, their implementations are incomplete. Once the final Rule is released, institutions will need to focus their efforts on completing their implementations so that they can offer compliant remittance transfer services by the effective date of the final Rule.

Additionally, as the systems for capturing the proposed metrics for Item 16(e) are not in place, such data gathering would require manually intensive processes. Moreover, the infrastructure that normally would be established to accompany certifications by senior officers does not yet exist. Hence, any provision of Item 16(e) information by June 30 (or within the first quarter that the final Rule becomes effective) would be difficult to attest to.

For these reasons we respectfully request that the Agencies permit institutions to complete their implementations, which are dependent upon release of the final Rule, and to accrue some experience with their new disclosure and error resolution responsibilities before the institutions provide comments on Item 16(e) reporting. Specifically, we ask that the comment period for Item 16(e) be extended until at least two quarters after the final Rule has gone into effect. This will provide institutions and their service providers time to assess, based on their experience with the live operations of their remittance transfer systems, how the proposed volume, value, and Temporary Exception reporting by Mechanism could most efficiently be accomplished.

The Associations note that the Proposal's suggestion that institutions could provide estimates that are accurate to at least two significant digits is not helpful. This is because

the primary challenge with the reporting is the proposed timing. Rather than imposing an immediate reporting obligation as soon as the final Rule becomes effective, which will necessitate the creation of temporary, manual processes and the need to estimate remittance transfer data, the Associations believe it would be much better for the Agencies to provide institutions sufficient time to design, implement, and test reporting systems that produce accurate information so that estimates are not needed.

C. Only Transfers for which an Institution is the Remittance Transfer Provider Should be Reported

The Agencies have proposed that the Item 16(e) reporting include all transfers that are remittance transfers as defined in the Rule "regardless of whether the institution or another party is the remittance transfer provider."[9] This would mean that institutions would be expected to report volumes, values, and Temporary Exemption use for transfers that the institutions (i) handle as correspondents (wire transfers) and international gateway operators (international ACH) for other institutions (i.e., remittance transfer providers or prior intermediaries of remittance transfer providers) and (ii) originate as agents of closed network providers (i.e., money transmitters). We note that a requirement to report transfers for which an institution is a correspondent or gateway operator is inconsistent with the Proposal's earlier statement that sub-items (c), (d), and (e) of Item 16 "would apply to services offered to consumers, rather than services provided to another institution on a correspondent basis."[10]

The Associations first note that use of the Temporary Exemption will only be known by the remittance transfer provider, as this is the only institution that provides disclosures and, thus, the only entity that would know whether or not it has used the Temporary Exemption. Therefore, it is not possible for an institution to report use of the Temporary Exemption for transfers for which the institution is not the remittance transfer provider.

With respect to reporting volumes and values for transfers in which institutions serve as correspondents or international gateway operators, institutions cannot reliably identify which ACH entries and wires are remittance transfers. This is because international ACH entries have no specified field that indicates whether the transfer is a consumer initiated transfer. Hence, absent a specific agreement between an international gateway operator and a sending institution to flag ACH entries that are remittance transfers in a particular manner, a gateway operator will not be able to distinguish remittance transfers from other international ACH entries.

With respect to wire transfers, CHIPS and Fedwire message formats will support a remittance transfer indicator, which institutions may use on a *voluntary basis*. Hence, to the extent the indicator is used, remittance transfers could be identified and counted by an intermediary institution. However, there is no guarantee that the indicator will be used in all remittance transfers sent via CHIPS or Fedwire. Additionally, not all remittance transfer wires are sent as CHIPS or Fedwire messages. Further, if the CHIPS or Fedwire transfer is the

[9] 77 Fed. Reg. 12149 (Feb. 21, 2013).
[10] *Id.*

first of two or more domestic "hops," the indicator may not be carried through to subsequent messages handled by other institutions.

With respect to reporting volumes and values for transfers that institutions originate as agents of a closed network provider, we believe that the reporting duty should fall on the the closed network provider, which is both the principal and the remittance transfer provider. The principal can count and report its remittance transfers just as readily as its agents. Further, gathering such closed network data from the principal rather than agents will enable more efficient information analysis since the data will be provided from a single source instead of possibly hundreds of agents. We note that this closed network reporting by entities that are not subject to the Call Report could be accomplished if the Agencies and the Bureau gather remittance transfer data by a survey of all remittance transfers, as we have suggested above.

The Associations also note that requiring institutions to report information about transfers for which they are not the remittance transfer provider will cause a single remittance transfer to be counted more than once. This over-counting would create inaccuracies regarding volumes and values of individual institutions and the market as a whole.

D. A Few Clarifications to Item 16 are Necessary to Ensure Accurate Reporting

Item 16(a)(1) and (2) asks institutions to report whether in 2012 or as of the report date the institutions offered to "consumers in any state" any of the Mechanisms "for sending money abroad." This language is vague and may lead to inconsistencies in the information that institutions report. Specifically, we note that "sending money abroad" could encompass payments that are not remittance transfers, such as checks, which would ostensibly fall under the "other mechanisms" category. To avoid any confusion as to the type of payments that are the subject of Item 16 and the Mechanisms for which the Agencies wish to collect data, we suggest that Item 16 consistently use the term "remittance transfer" as defined in the final Rule in all of its questions.

We recognize that the Rule and its definition of "remittance transfer" were not in effect in 2012 such that no remittance transfers (as defined in the Rule) were sent in 2012. Nonetheless, we believe it would be simpler to refer to "remittance transfers" in Item 16(a)(1) and (2) and then note on Schedule RC-M that institutions should count as remittance transfers any transfers that would have fallen under the Rule's definition, if the Rule had been in effect during the reported period.

Another area for which clarification is needed is with respect to the Mechanism "other proprietary services operated by your institutions," which appears in Items 16(a) and (e). The Associations are uncertain as to what this category is intended to include and ask that the Agencies provide more detail as to the type of remittance transfer services that will fall into this category. Similarly, the "other mechanisms" category is of concern as the Agencies have provided no indication as to what kinds of "other" remittance transfer services should be reported here. While we are aware, for example, that under the Rule certain loads onto prepaid cards and online bill pay services would be remittance transfers, we suggest that these be specified as additional mechanisms and that the "other" category be eliminated.

The final clarification the Associations request is to Items 16(c) and (d). In these questions institutions are asked whether they use certain payment, messaging, and settlement systems to "process" none, some, or all of their remittance transfers sent as wire or ACH payments. However, there is often overlap between these systems when institutions carry out an international payment. For example, an institution may send a SWIFT message to the recipient institution and also use CHIPS to send a cover payment to another foreign bank that serves as a common correspondent to both the US institution and the recipient institution.

It is unclear how, or if, the Agencies want institutions to report this overlap. To avoid the overlap issue and report what we think would be most useful, we suggest that Items 16(c) and (d) be clarified by replacing "process" with "initiate."

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Thank you for your consideration and review of this letter. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the undersigned using the contact information provided below.

Yours very truly,

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Appendix A – Association Descriptions

The Clearing House

Established in 1853, The Clearing House is the nation's oldest payments company and banking association. The Clearing House is owned by 21 of the largest commercial banks in America, which employ 1.4 million people domestically and hold more than half of all U.S. deposits. The Payments Company within The Clearing House clears and settles approximately $2 trillion daily, representing nearly half of the U.S. volume of ACH, wire and check image transactions. The Clearing House Association is a nonpartisan advocacy organization within The Clearing House that represents, through regulatory comment letters, amicus briefs and white papers, the interests of its owner banks on a variety of systemically important bank policy issues.

American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

Consumer Bankers Association

The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

The Financial Services Roundtable

The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

Independent Community Bankers of America

The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1.2 trillion in assets, $960 billion in deposits, and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.