

Statement for the Record
House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
“Safe and Fair Supervision of Money Services Businesses”

The Clearing House Association L.L.C., the Consumer Bankers Association, the Credit Union National Association, the Financial Information Forum, The Financial Services Roundtable, the Independent Community Bankers of America, NACHA – The Electronic Payments Association, and the National Association of Federal Credit Unions (collectively, the “Associations”) appreciate the opportunity to submit this statement for the record in connection with the June 21, 2012, hearing before the House Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit.

One important aspect of the supervision of money services businesses, and in fact, of the many financial services providers that transmit funds internationally for consumers, will be complying with the final remittance transfer rule (the “Final Rule”)¹ issued by the Consumer Financial Protection Bureau (the “Bureau”). The Final Rule implements Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and will become effective on February 7, 2013.

The Associations are fully committed to protecting consumers who send remittance transfers abroad to family and loved ones. In addition, the Associations understand and support the goals of Section 1073 and appreciate the efforts of the Bureau to implement the statutory language faithfully. However, we believe that the Final Rule reflects an unnecessary, and at times arbitrary, expansion of the statute which will ultimately have serious unintended consequences for consumers.

In particular, we wish to express to the Subcommittee our grave concern that the Final Rule will significantly diminish the availability of international transfer services and increase the cost of such services for consumers. The U.S. is the largest national source of remittances with residents transmitting close to \$50 billion per year from the U.S. to their home countries.² However, consumer access to international funds transfers through their banks, credit unions, and broker-dealers is now in serious jeopardy due to the nearly impossible compliance challenge that financial institutions must solve for in the next eight months. Thus, counter to the Bureau’s purpose to protect consumers, the Final Rule has the potential to cause considerable harm to consumers.

Specifically, we believe that:

- the definition of a “remittance transfer” is inconsistent with the traditional understanding of what constitutes a remittance transfer and is so broad that it will capture all consumer-initiated international electronic fund transfers regardless of their value or purpose;
- the proposed 25-transaction-per-year safe harbor to exempt providers from being considered a “remittance transfer provider” is too low to provide meaningful relief to institutions that truly do not offer remittance transfer services “in the normal course of

¹ Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012)

² “Migrants’ Remittances and Related Economic Flows,” Congressional Budget Office. February, 2011.

business” and thus will not prevent hundreds of financial institutions from exiting the market;

- some of the required disclosures, including foreign taxes and third party fees, currently cannot be provided through the “open network” payment systems³ used primarily by financial institutions for international funds transfers; and
- the extraordinary application of a strict liability standard for transaction errors imposed by the Final Rule and not called for by the statute will hold remittance transfer providers liable for the entire principal amount of requested transfers and related fees, even for errors beyond their control and for which they cannot mitigate.

Definition of a Remittance

The purpose of the remittance transfer provisions contained in the Dodd-Frank Act is to protect senders of remittance transfers, who are “not currently provided with adequate protections under federal or state law.”⁴ The Senate Report on The Restoring American Financial Stability Act of 2010 (“the Senate Report”), the Senate bill that became the Dodd-Frank Act, discusses these protections in the context of immigrants who “send substantial portions of their earnings to family members abroad.”⁵ The Senate Report further states that these senders of remittance transfers “face significant problems with their remittance transfers, including being overcharged or not having the funds reach intended recipients.”⁶

Furthermore as acknowledged by the Federal Reserve Board and other remittance authorities, the term “remittance transfer” typically means a cross-border person-to-person payment of relatively low value sent to a family member or loved one.⁷ In contrast, the Final Rule covers a wide range of transactions beyond transfers that have historically been thought of as remittance transfers to encompass all consumer-initiated international electronic fund transfers such as transfers to overseas accounts; transfers related to stock purchases or other investments; transfers made in connection with overseas real estate transactions; transfers to make payments for students studying abroad and other

³ The term “open network” includes, but is not limited to, various payment infrastructures, such as the SWIFT messaging network and payment card networks, as well as domestic and foreign market clearing infrastructures, such as ACH, Fedwire, CHIPS, India’s NEFT, and others.

⁴ S. Rep. 111-176, at 179 (2010).

⁵ *Id.*

⁶ Ironically, ICF Macro, the company retained by the Federal Reserve Board to help design disclosures, found that “[m]ost participants said they were satisfied with their experience sending remittances...” *Summary of Findings: Design and Testing of Remittance Disclosures*, April 20, 2011, p. ii available at [http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_\(FINAL\).pdf](http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_(FINAL).pdf).

⁷ The Board acknowledged in the preamble to the Proposed Rule that “traditional remittance transfers often consist of consumer-to-consumer payments of low monetary value.” 76 Fed. Reg. 29902. Furthermore, in its report to Congress on the use of the ACH system for remittance transfers to foreign countries, the Board noted that the majority of sources that compile data on remittance transfers focus on transactions that meet this definition. See Board of Governors of the Federal Reserve, Report to the Congress on the Use of the Automated Clearinghouse System for Remittance Transfers to Foreign Countries (July 2011) (citing International Transactions in Remittances: Guide for Compilers and Users, available at www.imf.org/external/np/sta/bop/2008/rcg/pdf/guide.pdf).

transactions that do not involve immigrants “send[ing] substantial portions of their earnings to family members abroad.”

The nature and purpose of these kinds of funds transfers are different from remittance transfers and are outside the scope of what Congress intended. Finality and immediacy are the key concerns of the consumers who send these transfers. Because the Final Rule emphasizes disclosure over speed, and prolonged and broad error resolution over finality, these types of transfers should not be covered by the remittance transfer rules.

Definition of a Remittance Transfer Provider

The Final Rule defines “remittance transfer provider” to mean any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. Comment 30(f)-2 to the Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider.

The Bureau has proposed to revise this comment to adopt a safe harbor for determining whether a person is providing remittance transfers in the “normal course of business.”⁸ Specifically, the Bureau has proposed that the comment would be revised to provide that if a person provided no more than 25 remittance transfers in the *previous* calendar year, that person does not provide remittance transfers in the normal course of business for the current calendar year as long as it provides no more than 25 remittance transfers in the *current* calendar year. However, if that person makes a 26th remittance transfer in the current calendar year, the facts and circumstances test would be used to determine whether the person is a remittance transfer provider for that transfer and any additional transfers provided through the rest of the year.

The Associations welcome the creation of a bright line test for determining whether a person is a remittance transfer provider; however, we believe that the proposed threshold is too low to provide meaningful relief to institutions that truly do not offer remittance transfer services “in the normal course of business.” Accordingly, we advocate that the Bureau raise this threshold to a figure that would provide a meaningful safe harbor to those institutions that truly are not in the business of providing remittance transfers on a routine basis, and, therefore, should not be subject to the compliance burdens imposed under the Final Rule.

When defining the safe harbor exception, the Bureau should also take into account the fact that a “remittance transfer” is defined extremely broadly in the Final Rule. Hence, even smaller institutions that do not provide more than 25 remittances per year, as those transactions have been traditionally defined, will not qualify for the proposed safe harbor because they may provide services that do fall under this extremely broad definition (e.g. a consumer wire to close a foreign real estate transaction). We are also concerned that the proposed structure would not provide meaningful relief for community banks or credit unions because any small financial institution that sends transfers would have to be prepared with a compliance program ready to operate if it nears that very small threshold proposed by the Bureau.

⁸ Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6310 (Feb. 7, 2012).

Required Disclosures to Consumers

The Final Rule will require all remittance transfer providers to disclose to consumers before a transfer is sent: the amount of funds that will be received; the foreign exchange rate used; any fees incurred; any taxes incurred (including foreign ones); and the date that the funds will be available. While we agree that increased disclosures can help protect consumers, financial institutions primarily use open networks (e.g. wire transfer, ACH, and card-to-card transfers) for consumer-initiated international funds transfers. Money services businesses also use open networks to offer services to consumers that transfer funds to overseas accounts.

Although these networks enable consumers to send funds account-to-account to almost anywhere in the world, they do not enable a financial institution in the U.S. to access the exact exchange rate, third party fees, and foreign taxes required by the Final Rule. These requirements are fundamentally misaligned with open network infrastructure and international correspondent banking practices as they currently exist. The existing cross-border payments infrastructure and market practices employed by financial institutions for international transfers does not support and never anticipated the types of disclosures called for by the Final Rule. Essentially, the Final Rule requires open-network providers to disclose information that those providers do not have and cannot easily or reliably obtain.

As the Bureau recognized in the preamble to the Final Rule, there is a stark difference in the way international transfers are processed over closed and open networks, making compliance by open network providers significantly more burdensome if not impossible. In closed networks, funds remain within one network and are controlled from end-to-end by the same remittance transfer provider and its agents in privity of contract. Hence, the funds transfer provider has complete control over all aspects of the funds transfer and is fully informed with respect to relevant information regarding the transaction.

In contrast, an open network involves funds being transferred out of the sending institution to their ultimate destination at an unaffiliated recipient institution. Along the way, those funds may pass through one or more intermediary institutions before arriving at the final destination. One of the primary benefits to consumers of the open network system is that it enables customers to send funds from any point of origination to virtually anywhere in the world, however remote, because of the vast infrastructure of interconnected financial institutions. Nonetheless, because of the way in which the funds transmission process works, **remittance transfer providers using open networks have significantly less control over or access to information regarding international transfers**. In short, the Bureau's Final Rule favors one process over another.

In particular:

- the provider will have the right to access only the information relevant to its direct correspondent banks. However those correspondents will have their own correspondent banks, which, in turn, will have their own correspondent banks, and so on – and the provider is not in contractual privity with these attenuated correspondents (i.e., intermediary banks) and therefore does not have a contractual or other legal right to their rate and fee information, nor is the provider likely to know the exact route that a transfer will travel;
- the provider in almost all cases will not know the identity of the intermediary institutions that will be involved in the funds transfer until after its completion, especially when numerous

intermediaries are involved in a transfer, and thus the provider will have difficulty requesting the requisite information from all relevant parties;

- the provider must routinely monitor categories of information in order to provide accurate disclosures (including, but not limited to, fees, taxes and other costs that may be charged by intermediaries) that are subject to change without notice and are entirely beyond the control of the provider; and
- the various open network infrastructures, such as the SWIFT messaging network as well as domestic and foreign ACH and wire systems, are typically one-way message systems that cannot readily and expeditiously communicate disclosure information back to a financial institution; significant modifications to these domestic and international infrastructures or additional communication channels must be established before information can flow in an automated manner between an originating financial institution and other institutions, which are changes that providers are not in a position to effect, particularly given the limited time between now and February 2013.

For these reasons, the Final Rule puts at risk the ability of open network providers to continue providing international transfers for consumers. Accordingly, additional time is needed beyond the February 7, 2013, effective date to appropriately assess and navigate these issues and, where possible, to establish new contractual relationships or re-negotiate existing ones with foreign financial institutions. To be clear – we believe that the objectives of Section 1073 are important and should not be abandoned, but such objectives will need to be accomplished in a rational progression that reflects the operational realities of the open network transfer system, and the time it will take to make the appropriate structural changes to this framework.

Foreign Taxes

Although not required by Section 1073, the Final Rule mandates that remittance transfer providers disclose the amount of taxes imposed on the transfer by persons other than the remittance transfer provider, including foreign taxes.

It will be practically impossible in a cost effective manner for financial institutions – and for smaller institutions in particular – to monitor all of the foreign tax laws that may apply to an international funds transfer. In the event an institution is able, such an effort will require significant resources to catalogue the tax laws of every foreign country, in addition to ensuring those laws are up-to-date. Thus, to comply, financial institutions will be required to constantly monitor numerous tax laws in every foreign country and locality to which they offer remittance transfer services, and to understand and appropriately apply these laws to a wide range of transactions.

The cost of this effort is likely to be passed along to consumers in the form of higher fees. Furthermore, to comply with the foreign tax disclosure obligation, financial institutions may be required to question their customers on various aspects of the transfer, including, among other things, the purpose of the transfer and the status of the designated recipient. Often, it will be impossible for consumers to provide the correct information to the sender regarding the legal or relationship status of the recipient under the laws of all applicable foreign regimes.

The Associations note that a significant purpose behind the Final Rule is to provide consumers with the ability to comparison shop among available remittance transfer providers. Disclosing foreign

taxes in no way furthers this purpose as those taxes will be the same regardless of which provider sends the transfer. Accordingly, the Associations strongly advocate that the Bureau eliminate the foreign tax disclosure requirement.

Strict Liability

The Final Rule imposes a strict liability standard on remittance transfer providers when a recipient receives an amount that is different than the amount disclosed to the consumer or when the recipient receives funds on a date later than the date disclosed to the consumer. The provider will be liable for such errors even when caused by circumstances beyond a provider's control, such as those caused by others on an open network, or, even more troubling, by incorrect information provided by the consumer. This strict liability framework goes far beyond other consumer payment error resolution regimes in the United States and conflicts with the core business principles of risk management and safety and soundness.

Moreover, the Final Rule places providers at risk for amounts beyond what they received to perform the transfer service: namely fees and taxes charged by other entities, as well as the principal amount of a remittance transfer. This framework creates considerable risk of financial loss that providers will be largely unable to mitigate or manage, encourages active fraud, and threatens the business case for consumer international transfer services.

The Associations recommend that the Bureau modify the Final Rule to minimize the extraordinary and asymmetrical risk of loss that the Final Rule unreasonably imposes upon providers, and more importantly the safety and soundness risk the rule creates for senders.

Unintended Consequences

As noted at the beginning of this statement, the Associations are gravely concerned that the Final Rule will reduce consumer access to international transfer services and result in reduced competition among providers because many financial institutions will be forced to severely limit their international transfer product offerings or exit the market altogether. For example, smaller institutions may not have the resources to monitor foreign tax laws or changes in fees charged by unrelated financial institutions. Moreover, providers that remain in the market are likely to increase fees charged for international transfer services to cover the costs of complying with the Final Rule and to address the significant risk of principal loss the Final Rule imposes on providers.

The considerable harm that the Final Rule will cause to consumers is magnified when applied to the unbanked and underbanked markets in the U.S. The reduced availability and increased cost of international transfer services that will result from the Final Rule will drive unbanked and underbanked populations to rely increasingly on unregulated – and often underground – financial services providers outside of the mainstream banking system. Such an outcome greatly increases the risk of money laundering and terrorist financing, and undercuts the ability of regulated financial institutions to integrate these populations into the mainstream banking system.

We also note that military service members may be negatively impacted by the Final Rule. As a consequence of certain requirements for online bill pay services, financial institutions may no longer process bill payment services to military addresses abroad.

Finally we note that Section 1073 specifically directed regulatory policymakers “to expand the use of the automated clearinghouse system . . . for remittance transfers to foreign countries” and required biennial reports to Congress on the status of such efforts. However, due to the fundamental misalignment of the rules with open networks such as the ACH system, the final rules will work against this directive by hampering the growth and diminishing the use of this cost-efficient means of international funds transfer.

Conclusion

To avoid the unintended consequence of reducing consumer access to international funds transfer services, and to fully understand the impact that the Final Rule will have, the Associations have urged the Bureau to delay implementation of the Final Rule in order to provide time to:

- study the impact of the Final Rule on the availability and cost of international funds transfer services to consumers;
- engage with the industry to determine ways in which to (1) narrow the scope of these rules to apply only to remittance transfers as traditionally defined, and (2) ease the burdens and costs associated with the Final rule; and thereby
- avoid the unintended consequences of reducing consumer access to international funds transfer services.

Thank you for the opportunity to submit this statement. We would be happy to answer any questions or discuss this issue further with members of the Committee.

Respectfully submitted,
The Clearing House Association, L.L.C.
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Independent Community Bankers of America
NACHA – The Electronic Payments Association
National Association of Federal Credit Unions