



OHIO CREDIT
UNION LEAGUE

July 22, 2011

VIA E-MAIL TO: regs.comments@ncua.gov

Jennifer L. 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 No. 7100-AD 76**
Electronic Funds Transfers – International Remittances

Dear Ms. Johnson:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the Federal Reserve Board's Proposed Rule implementing Section 1073 of the Dodd-Frank Act.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. The Ohio Credit Union League (OCUL) is the trade association for credit unions in Ohio and advocates on behalf of 384 credit unions and their 2.7 million members in the state of Ohio. We appreciate the opportunity to provide suggestions and feedback to the Federal Reserve Board (Board) prior to adoption of any rules as proposed.

Summary of Proposal

Sections 1073 of the Dodd-Frank Act adds a new §919 to the Electronic Funds Transfers Act (EFTA) adding new disclosures and error resolutions provisions for consumers sending remittances to foreign countries. Under these regulations, providers of remittance services must give certain disclosures to consumers sending remittances regarding fees and taxes, the applicable exchange rate, and the amount of currency that will be received by the recipient. In addition, error resolution rights of the consumer and standards for error resolution are detailed. The regulations also contain rules regarding appropriate cancellation and refund policies.

Disclosure of Precise Transaction Details

Remittance providers (providers) must provide a written disclosure prior to initiating a transaction (prepayment disclosure) detailing the actual exchange rate, fees and taxes, and the amount of money to be received. Providers must also provide the consumer with a written receipt that includes the prepayment disclosure information along with information about error resolution, provider and regulator contact information, and the availability of the funds upon receipt. Alternatively these two disclosures may be combined and a confirmation notice may be furnished once the transaction between the provider and the consumer is concluded.



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Jennifer L. Johnson, Secretary
Board of Governors of the Federal Reserve System
July 22, 2011
Page 2

The actual amount of all fees must be provided in these disclosures, including those imposed by intermediary financial institutions and any applicable taxes imposed by the taxing authorities in the country receiving the remittance or fees imposed by the receiving remittance provider. Additionally, accurate information about the exchange rate used in the transaction and the availability of funds for pick-up by the recipient must be included in the disclosures. The actual amount of currency to be received must then be calculated using these disclosed fees and exchange rate.

OCUL supports the increased transparency brought to the process of remittance transactions by the proposed regulations. However, OCUL has concerns about some specific pieces of these requirements the regulations impose on providers. In particular, the requirement to provide the consumer with precise information regarding the actions of other parties to the transaction or circumstances not under the provider's control is problematic.

Credit unions rarely provide international remittance services through direct contact with the recipient country. Instead, such transactions are typically processed through correspondent services, commonly through a credit union service organization (CUSO). Transactions are then processed through an "open network," such as SWIFT, Fedwire, or international ACH systems. Fees and taxes imposed by the credit union and the CUSO or other initial correspondent institutions are easily determined and therefore easily disclosed to the consumer. However, fees imposed by any subsequent intermediary financial institution, and more particularly by any party, governmental or otherwise, in the recipient country are not easily determined. Information provided by such parties may be stale and not routinely updated, if available generally at all. Further, currency exchange rates may fluctuate even during the course of a single day, and predicting the ultimate rate is not possible. Finally, due to infrastructure deficiencies in some recipient countries, it may not be possible to determine the actual date the funds might be available to the recipient.

OCUL recommends that the Board limit the Proposed Rule's requirement that all fees and taxes and actual exchange rate provided to consumers be limited to providers such as Money Transfer Organizations (MTOs, such as Western Union or MoneyGram), who have control of both ends of the transaction.

OCUL requests a revision that so long as a provider discloses fees to the best of its ability and to the extent that it is able to provide the information, it will have met the appropriate compliance standard. OCUL proposes that the Board implement a second regulation for financial institutions providing remittance transfers through open networks. These disclosures would provide the information regarding any fees charged by the provider, with a statement that "other fees and charges may be applied to the transaction." The disclosures would include an estimated exchange rate and funds availability date, identified as "subject to change."

Proposed Exceptions to Allow Use of Estimates

In the absence of the proposed additional regulation above, the Proposed Rule includes two exceptions for the requirement that the actual amount of currency to be received that allow an estimated exchange rate: 1) a temporary exception on transactions where the provider is a federally-

Jennifer L. Johnson, Secretary
Board of Governors of the Federal Reserve System
July 22, 2011
Page 3

insured credit union (FICU) and the consumer has an account with the provider, where the provider cannot determine precise amounts for the required disclosures due to reasons beyond the FICU's control, which expires July 20, 2015; or 2) a permanent exception, limited to ACH transfers only, where the provider cannot determine the amounts to be disclosed due to the laws of the receiving country or the method by which transactions are made in the recipient country.

OCUL applauds the recognition by the Board of some of the difficulties in presenting precise information as detailed above. However, these exceptions should be broadened in order to assist providers in disclosing information to the best of their abilities while limiting any adverse impact to consumers.

The first exception applies only to federally-insured financial institutions. Therefore, it would not be available for use by a state-chartered, privately-insured credit union. These state-chartered privately-insured credit unions are subject to much of the same stringent regulations regarding both consumer protections and safety and soundness as those insured by the federal regulator. OCUL requests that the exception be changed to include all depository institutions subject to either federal or state examination.

The second exception allows the use of estimates where the provider cannot determine amounts to be disclosed due to circumstances in the recipient country, such as laws or methods by which the transaction is made. This exception potentially allows a broader exception to the requirement to provide precise information in disclosures. However, it is unclear how the determination that this exception exists in regard to a particular receiving country is to be made. OCUL requests further clarification regarding the determination of a permanent exception under this Proposed Rule.

“Ordinary Course of Business” Standard

Generally, credit unions provide remittance services for their members as an accommodation. In most cases, the volume of remittance transfers is extremely low, as compared with other providers. OCUL suggests that the Board adopt a standard that would exclude providers of remittances not offered “in the ordinary course of business” to exclude those providers who process remittance transfers through an open network rather than directly to the recipient's country through a proprietary network, so long as the provider does not hold itself out to the immigrant community as a “remittance” provider. Alternatively, OCUL requests that the Board define a threshold that a provider who does not provide more than 100 transfers per month (1200 per year) be excluded from the definition of a provider in the “ordinary course of business.”

Error Resolution

The Proposed Rule's error resolution provisions do not reflect the operational realities of remittance transfers sent through open networks, rather than through money transfer organizations. The provider using an open network has no control over errors or delays caused by other intermediaries or the final receiving institution in the recipient's country. To extend liability for errors beyond the control of a provider would have a chilling effect on the willingness of the provider to continue to

Jennifer L. Johnson, Secretary
Board of Governors of the Federal Reserve System
July 22, 2011
Page 4

offer remittance transfer services, which would have the effect to shrink the number of providers and reduce competition in the marketplace.

OCUL requests that the Board refine the Proposed Rule's error resolution provisions to exclude liability for errors such as late delivery or delivery to the wrong account by the receiving institution beyond the control of the provider.

The Proposed Rule also extends a right to a refund to the consumer by a provider should the recipient in a foreign country be a victim of identity theft. Such a Rule might be applicable in the case of a transfer that is a pick upon proper identification transaction (such as those provided through MTOs). Transfers over an open network, which are account-to-account transfers, should not be subject to the same liability. Crimes such as identity theft occurring outside this country are legally within the jurisdiction of the country where the funds are received. OCUL therefore requests that the Board refine the Proposed Rule to clarify that a provider is not liable for crimes such as identity theft in connection with a remittance transfer. If implemented, such an exception to liability for criminal acts would be disclosed on the notices provided to the consumer through an addition to the notice advising that the provider has no liability for such criminal acts.

Cancellation

Under the Proposed Rule, a consumer would have the right to cancel an international remittance transfer within one business day. Because credit unions utilize an open network to transmit remittances, they do not have control over the international wire or ACH transaction once it has been transmitted to a correspondent institution. Therefore, the only effective method of allowing a cancellation within one business day would be to hold the transaction until the next business day, effectively delaying transmission and adversely impacting consumers, who generally want funds transferred very quickly. OCUL therefore requests that the Board revise the cancellation period to no more than 30 minutes or allow the consumer to "opt out" of the cancellation period.

Conclusion

The Dodd-Frank Act mandates changes to the Electronic Funds Transfers Act (EFTA) concerning international remittance transfers. The Proposed Rule requires new disclosures to consumers regarding details of the transaction and the consumer's rights regarding error resolution and cancellation of the transaction.

These new disclosures introduce new forms to be given to consumers. OCUL recognizes the importance of the information included on the new disclosures, but suggests that some of the information required in the disclosure is not easily determined and, further, includes factors not within the control of a credit union as a provider of remittance transfers. OCUL therefore requests that the existing exceptions to the requirement of providing actual total fees, exchange rate and funds availability be amended to include an exception for providers using an open network to transmit remittances. In the absence of such new exception, the existing exceptions under the rule should be expanded to include all financial institutions under examination or regulation by either a

Jennifer L. Johnson, Secretary
Board of Governors of the Federal Reserve System
July 22, 2011
Page 5

federal or state regulator and should further clarify how the determination that a permanent exception to the disclosure requirements exists due to circumstances in the recipient country.

OCUL also suggests that providers such as credit unions who do not provide a volume of remittance transfers in excess of a limit to be determined by the Board, such as 100 remittances per month or 1200 per year be excluded from these regulations as they do not provide remittance transfers "in the ordinary course of business."

OCUL further suggests that the Board revise the error resolution provisions under the Proposed Rule to recognize that some errors on the part of intermediary institutions or recipient institutions in other countries are beyond the control of credit unions and other depository institutions using an open network, and therefore should revise liability for errors for circumstances and actions beyond the control of those providers. In particular, a provider should not be liable for any criminal acts such as identity theft committed in the receiving country.

The cancellation provisions in the current Proposed Rule will have the effect of delaying transmission of a remittance over an open network. Therefore, OCUL suggests that the Rule be amended to shorten the cancellation period from one business day to a shorter period of time or allow the consumer to opt out of the cancellation provisions to speed transmission of the remittance.

OCUL appreciates the opportunity to present comments on behalf of Ohio's credit unions to the Board on its proposed rules for international remittance transfers. Thank you for your consideration of the comments presented. If you have any questions, please contact me at (614)923-9766 or jkozlowski@ohiocul.org

Sincerely,



John F. Kozlowski
General Counsel



Carole D. McCallister
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cc: Mary Dunn, CUNA General Counsel
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