



July 15, 2011

The Honorable Daniel K. Akaka
United States Senate
141 Hart Senate Office Building
Washington, D.C. 20510

Re: The Federal Reserve's Proposed Remittance Transfer Rules

Dear Senator Akaka:

The undersigned associations are concerned that instead of protecting consumers, the proposal to implement Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act will have the reverse affect, making these services unaffordable and unavailable. We believe that the remittance transfer rules proposed by the Federal Reserve Board on May 12, 2011 ("Proposed Rules") will impact consumers in ways that you did not intend. To the extent you agree with our observations we provide in this letter, we ask that you please communicate directly with Leonard Kennedy, General Counsel of the Consumer Financial Protection Bureau, to convey your views.

Purpose of Section 1073

As the lead sponsor of Section 1073, we understand that your intent was to ensure that consumers who send remittance transfers have appropriate protections. In particular, the legislation was designed with the goal of protecting immigrant communities,

including working families that send money to their loved ones in other countries by providing disclosures and error resolution rights. Furthermore, the legislation seeks to expand access to low-cost, efficient remittance transfer services for consumers. Unfortunately, the Board's Proposed Rules may undermine these objectives.

Risk of Fewer Services and Higher Fees

If unchanged, the Proposed Rules will result in less consumer choice and higher consumer cost. Fewer insured financial institutions will provide remittance services to consumers. And financial institutions that do continue to provide remittance services will likely need to increase fees to offset higher compliance and risk costs, at least for transfers sent via open networks. As a result, immigrants, who today send remittances through their bank or credit union, may no longer have access to remittance services from their financial institution or may no longer be able to afford the fees necessary to cover the substantially increased costs and risk for financial institutions.

The primary reason that immigrants risk losing access to affordable remittance services – or remittance services all together – from their financial institution is because the Proposed Rules make the provision of remittance services using open networks (i.e., wire transfer and ACH) untenable.

Specific Problems with the Proposed Rules

1. The Board has applied the “permanent” exception for transfers to certain nations too narrowly.

Under Section 1073(c), the Board may grant an exception from the “exact amount” disclosures when the method by which remittances are made in a recipient country does not allow the remittance transfer provider to know the amount of currency that will be received by the designated recipient. Remittances sent as ACH or wires utilize open networks which involve the use of a network or independent, intermediary institutions in foreign countries to move funds. Such foreign institutions are not subject to US law.

A financial institution in the US has no knowledge or control over the route the funds may move nor the exact exchange rate that will be applied by another institution or the fees and taxes that will be subtracted from the payment by other institutions and governments. Accordingly, using an open network remittances to send remittances is a method that does not allow a sending institution to know the precise amount of currency that will be received by the designated recipient in a foreign country and logically should fall under the “method” exception.

The Board, however, has declined to grant an exception for open network systems. Instead, the Proposed Rules have deemed that only certain international ACH services offered by the Federal Reserve Banks constitute a method that prevents a provider from knowing the exact amount that will be received by the recipient. However, all open network remittances are subject to the same operational realities that make upfront disclosure of the exact amount to be received (as well as the exact date of funds availability) impossible for a remittance transfer provider to know.

The Associations urge that the permanent “method” exception be applied to all open network remittances.

2. The Proposed Rules create prescriptive, unworkable, and unhelpful “reasonably accurate estimate” standards.

The Board’s limited bases for generating estimates of taxes, fees, exchange rates, and other charges require remittance transfer providers to base estimates on information that will be very difficult, and in some instances, impossible for a provider to know. Further, the estimates will require labor intensive research that will not provide senders with information that makes the total cost of a transfer or receipt amount any more transparent than the information senders receive today about transfers sent via open networks.

For transfers sent via an open network the Associations propose a less prescriptive approach. Providers should simply base their estimates on the best information reasonably available to them and couple this estimate with a disclosure that:

- the remittance transfer is being sent via an open network,
- the remittance transfer is subject to fees and rates the financial institution does not control, and
- the exact amount that the recipient will receive and the exact date on which funds will be available cannot be guaranteed.

This alternate approach to disclosure would provide senders with realistic information about their wire or ACH remittance transfer and would enable financial institutions to continue to offer remittance services.

3. The Proposed Rules delay the execution of wire and ACH transfers due to the one day right of cancellation.

Because wire and ACH transfers cannot be recalled once they are sent forward, financial institutions will delay the execution of cross border consumer transactions until the cancellation period has passed. This means consumers will

lose the ability to send funds via wire and ACH the same day that they request the transfer. The Associations believe there are emergency situations in which it is critical to a consumer that their funds move as quickly as possible to the recipient. The Proposed Rules deny consumers this ability in the wire and ACH channels.

The Associations urge that, as part of developing rules that are a separate, tailored rule set for open network transfers, the right of cancellation be shortened to a period that better balances the ability to cancel with the need to move funds as quickly as possible.

4. The Proposed Rules fail to address the conflict between Section 1073 and UCC Article 4A.

Uniform Commercial Code Article 4A is the long-standing legal framework governing wire transfers. UCC 4A provides an end-to-end rule set that addresses issues between each party (sender, sender's bank, intermediary banks, beneficiary's bank, and beneficiary) to a wire transfer. These rules have significantly influenced banking industry standards and practices relating to wire transfers.

Section 1073 makes UCC 4A inapplicable to wire transfers that fall under the definition of remittance transfers. This is problematic because the new remittance transfer rules do not provide the same end-to-end coverage as UCC 4A. Without UCC 4A, there is no rule set that allocates risks among financial institutions for wire transfers. Such predetermined risk allocation is core to the safety and soundness of a payments system and is especially important for high value payments, which currently fall under the remittance transfer regime.

Because the Proposed Rules do not preserve UCC 4A's application as between consumers and financial institutions, financial institutions that send wire transfers will face significant legal uncertainty as to their rights and responsibilities in relation to other parties involved in a wire transfer. The Associations believe that the Board should exempt large value payments from application of the Proposed Rules (more fully explained in paragraph 5 below), which would enable UCC 4A to continue to apply to large value payments thereby reducing the number and value of payments that are without an applicable rule set

5. The Proposed Rules apply remittance transfer protections to high value payments that are not remittance transfers.

The Board's Proposed Rules apply the same consumer protections to high value and low value transfers. However, high value transfers have a different purpose

than transfers made from immigrants to family members in foreign countries. For example, some individuals send large amounts of money overseas for real estate purchases, stock trades, and other investments. For these transfers, senders are typically most interested in the speed and finality of the transfer.

However, application of the Proposed Rules to these high value transactions will result in slower processing (due to the one day right to cancel) and delayed finality (due to the 180 day error resolution period). This may lead some senders to move their business to overseas banks so that they may continue to conduct transactions on a same day, final basis.

The Board has authority under Section 1073 to refine the definition of remittance transfer to carry out Congressional intent by protecting the consumers that were meant to be covered while simultaneously preserving for high value transfers the key characteristics of speed and finality as well as the legal framework that supports those characteristics. Hence, the Associations believe that transactions that exceed the value of normal remittance transfers should not be subject to the Proposed Rules. We suggest a cap of \$1000, which we think is the maximum amount of a remittance.

6. Financial Institutions that send a de minimus amount of remittance transfers should not be considered remittance transfer providers under the Proposed Rules.

Small financial institutions that send minimal numbers of remittances cannot afford the implementation and compliance costs resulting from the Proposed Rules. These institutions are likely to cease providing remittance services, including in rural markets, which will further hinder consumer choice. We believe that financial institutions that send less than a certain number of remittance transfers should not be considered “remittance transfer providers” as they do not provide such services in the normal course of their business but simply as an accommodation to their customers. The Board has legal authority to make this kind of an exemption, which would enable small institutions that provide remittance transfers as an occasional service to their customers to continue to do so.

The Associations suggest that financial institutions that send less than 100 remittances a month be excluded from the requirements of the Proposed Rules.

Finally, we believe it is imperative that the Board obtain input from the financial services industry to better understand the impact of the Proposed Rules on consumer price and choice. Under Section 1073, the Board is required to “prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers . . . and the effects upon competition in the

provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers.” In preparing this analysis we urge that the Board be required to seek input from financial institutions on the impact the final remittance transfer rules have had on their remittance transfer services.

If implemented without the reforms we urge you to support in this letter, the Proposed Rules will have significant negative impact on the ability of banks and credit unions, large and small, to provide remittance transfer services to consumers. This result risks moving remittance transfer services outside of the realm of highly regulated banks and credit unions and into less-regulated and likely higher cost remittance services. Such a result, the Associations believe, is contrary to the intent of Section 1073.

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Thank you for your consideration of our concerns. If you have any questions or wish to discuss this letter, please do not hesitate to contact any of the associations undersigned below.

Yours very truly,

The Clearing House Association, LLC

Independent Community Bankers of America

Credit Union National Association

American Bankers Association

National Association of Federal Credit Unions

NACHA – The Electronic Payments Association

Financial Services Roundtable

Information about the Associations

Presented below is information regarding the signatories to this letter.

American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

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.

Credit Union National Association

The Credit Union National Association ("CUNA") is the largest credit union advocacy organization in the country, representing approximately 90 percent of the nation's 7,400 state and federal credit unions, which serve approximately 93 million members. CUNA benefits its members by partnering with its state leagues to provide proactive representation, the latest information on credit union issues, economic reports, regulatory analyses, compliance assistance, and education.

Financial Services Roundtable

The Financial Services Roundtable represents 100 of the largest 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 \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 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.

NACHA – The Electronic Payments Association

NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data. The ACH Network serves as a safe, secure, reliable network for direct consumer, business, and government payments, and annually facilitates billions of payments such as Direct Deposit and Direct Payment. Utilized by all types of financial institutions, the ACH Network is governed by the *NACHA Operating Rules*, a set of fair and equitable rules that guide risk management and create certainty for all participants. As a not-for-profit association, NACHA represents nearly 11,000 financial institutions via 17 regional payments associations and direct membership. To learn more, visit www.nacha.org, www.electronicpayments.org, and www.payitgreen.org.

National Association of Federal Credit Unions

The National Association of Federal Credit Unions exclusively represents the interests of federal credit unions before the federal government. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at www.nafcu.org.