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February 1, 2013

Submitted via <http://www.regulations.gov>

Ms. Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2012-0050 and RIN 3170-AA33
Proposed Revisions to Regulation E, Remittance Transfer Rules

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)¹ is pleased to submit comments regarding a proposal by the Bureau of Consumer Financial Protection (“Bureau”) that would revise certain aspects of the Regulation E Rule issued to implement Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Final Rule”). The Final Rule requires remittance transfer providers to provide consumers with detailed disclosures, including with respect to third party fees and foreign taxes, and to investigate and remedy errors related to remittance transfers.

ICBA has signed a separate joint comment letter with The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, the Credit Union National Association, the Financial Services

¹ The Independent Community Bankers of America®, the nation’s voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing 300,000 Americans, ICBA members hold \$1.2 trillion in assets, \$1 trillion 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.

Roundtable, the NACHA – the Electronic Payments Association, and the National Association of Federal Credit Unions. The purpose of this submission is to explain the unique perspective of community banks and to provide recommendations based solely on that perspective.

Background

On February 7, 2012, the Bureau issued a Final Rule to implement Section 1073 of the Dodd-Frank Act, which amended the Electronic Fund Transfer Act (“EFTA”) to create new requirements regarding “remittance transfers”. On August 20, 2012, the Bureau issued a supplemental rule that modified certain aspects of the Final Rule.²

On October 17, 2012, in the wake of concerns from community banks, ICBA sent a letter to the Director Cordray urging reconsideration of three aspects of the Final Rule -- liability for sender error and the disclosure of foreign taxes and beneficiary account fees. Specifically, ICBA voiced concern that the 1,500 – 1,800 community banks not covered by the safe harbor in the Final Rule would have to exit the remittance transfer business or alter the availability of this service.

On December 31, 2012, the Bureau published in the *Federal Register* a proposed rule (“December Proposed Rule”) that would revise the Final Rule to facilitate broader industry compliance. The December Proposed Rule reconsiders three aspects of the Final Rule that remittance transfer providers who rely on open payments networks³, particularly financial institutions, find problematic: liability for consumer error, disclosure of foreign taxes; and disclosure of recipient bank fees. Additionally, as a result the December Proposed Rule, the effective date of the Final Rule has been delayed from February 7, 2013, to 90 days after the proposed rule is finalized.

ICBA Comments

ICBA deeply appreciates the willingness and the flexibility of the Bureau to reconsider these problematic provisions of the Final Rule. Amending these aspects of the Final Rule could prevent community banks from exiting the remittance

² In this letter, the term “Final Rule” refers to both the February 2012 and the August 2012 final rules collectively.

³ “Open networks,” which include ACH and wire transfers, involve 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. The open network funds transfer provider, thus, has significantly less control over receiver information.

transfer business, thus encouraging a vibrant remittance transfer marketplace and preserving consumer choice.

However, ICBA remains concerned that the December Proposed Rule does not provide sufficient relief from the compliance burden of the Final Rule to prevent community banks from scaling back their remittance transfer services or exiting the remittance transfer market altogether.

ICBA also is concerned that the proposed disclosure of recipient institution fees and foreign tax requirements will add consumer-confusion and will impair consumers' ability to effectively comparison shop between providers, and cause consumers to overfund transfer amounts.

ICBA strongly recommends three simple modifications in order to prevent consumer confusion and ensure community bank participation in remittance transfer services:

- ICBA strongly urges the Bureau to disclose recipient bank fees by means of a statement that recipient institution fees may apply.⁴
- ICBA strongly urges the Bureau to disclose recipient bank fees by means of a statement that foreign taxes may apply.
- ICBA strongly urges the Bureau to ensure that the senders should be responsible for the accuracy of **all** routing and account crediting information they provide, not just account numbers.

The December Proposed Rule, the Bureau has delayed the effective date of the Final Rule from February 7, 2013, to 90 days after the proposed rule is finalized. ICBA agrees that a 90 day effective date is sufficient, **if** the Bureau incorporates the above suggestions on recipient institution fees, foreign taxes and sender error.

However if the finalized rule is similar to December Proposed Rule, ICBA strongly urges the Bureau to make the Final Rule effective 240 days after the December Proposed Rule is finalized.

⁴ ICBA recommends the verbiage provided in the industry letter:

Please note this disclosure does not include: fees that may be charged to your recipient by the recipient's financial institution in connection with this transfer; foreign taxes that may be imposed on "other fees" or on the transfer amount. These fees and foreign taxes may reduce the amount received by your recipient or may be charged to your recipient after the transfer is received.

Disclosure of Recipient Institution Fees

In the December Proposed Rule, the Bureau includes a new section, § 1005.32(b)(4), which provides an exception that permits remittance transfer providers to disclose the highest possible recipient institution fees that could be imposed on the remittance transfer. This determination must be based on either fee schedules made available by the recipient institution or information ascertained from prior transfers initiated by the sender.

While ICBA greatly appreciates the Bureau's flexibility on this issue, we are concerned that such estimates may still be incorrect as recipient institution fees are a matter of contract between the recipient and his or her financial institution. The remittance transfer provider has no knowledge of the amount of the fee, or whether a fee will even be assessed. Therefore, determining the amount of the fee and tracking and maintaining information to help a remittance transfer provider determine and disclose the fee is a colossal task and will still cause many community banks to exit the remittance transfer market altogether.

Additionally, since recipient institution fees are not controlled by the sender and will vary, the proposed disclosure requirements will provide little value to the consumer when comparison-shopping. Since the recipient fees disclosed could be the highest possible fee based on assumptions about different variables that may or may not apply, consumers would have incorrect information and would likely overfund the transfer.

For these reasons, ICBA strongly urges the Bureau to reconsider these assumptions and to use its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose recipient institution fees as specific amounts. Instead, ICBA recommends that the disclosure of recipient institution fees be limited to a statement that "recipient institution fees may apply".

Disclosure of Foreign Taxes

In the December Proposed Rule, the Bureau revises § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government need to be disclosed and adds § 1005.32(b)(3) to permit providers that do not have specific knowledge regarding variables that affect the amount of taxes imposed by other persons to disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.

ICBA greatly appreciates the Bureau's flexibility to exclude sub-national taxes from the proposed requirement; however, we remain concerned about the burden of acquiring and maintaining national foreign tax information. Again, we are deeply concerned that this disclosure requirement will cause many community banks to limit the scope of their service to certain countries or exit the remittance transfer market altogether.

Additionally, since all foreign taxes, both on the national and sub-national level are not controlled by the sender and will not vary, they will provide little value to the consumer when comparison-shopping. Since the taxes disclosed could be the highest possible fee based on assumptions about different variables that may or may not apply and would disclosure, some, but not all taxes, this would create customer confusion, and may cause consumers to overfund the transfer.

For these reasons, ICBA strongly urges the Bureau to reconsider these assumptions and to use its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose all foreign taxes as specific amounts. Instead, ICBA recommends that the disclosure of foreign taxes be limited to a statement that "foreign taxes may apply".

Sender Error

In the December Proposed Rule, the Bureau revises the definition of error in § 1005.33(a)(1)(iv) by adding a conditional exception in which a sender provides incorrect or insufficient information with a transfer and, as a result of the sender's mistake, the funds are deposited into the wrong account. The proposed provision would exclude from the definition of error a failure to make funds available to the designated recipient, if the provider can demonstrate that:

- the sender provided an incorrect account number;
- the sender disclosed the possibility that if the account number is incorrect sender could lose the transfer amount;
- the incorrect account number resulted in the deposit of the remittance transfer into an account other than the designated recipient's account; and
- the provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

Again, ICBA deeply appreciates the Bureau's willingness and flexibility to revise the error resolution and liability requirements that arise for sender error. We believe that the Final Rule is unworkable, inequitable, creates the potential for fraud, and

thus adds exposure that, if left unchanged, will cause community banks to limit the scope or discontinue their remittance transfer services.

While ICBA agrees with the Bureau that proposed exception to the definition of error for failing to make funds available by the disclosed date of availability is appropriate and necessary, we believe that the proposed exception is too narrow and restrictive. The December Proposed Rule limits sender error only to instances of incorrect account number. However, errors occur from other incorrect information: name of the recipient bank, name of the recipient account, bank identifier (“routing number” is a term used only in the U.S.) or International Bank Account Number (“IBAN”). None of these can be easily or accurately validated.

The December Proposed Rule states that it “believes that in many instances, providers either already verify routing numbers or are in a position to do so when sending transfers to accounts.” However, most community banks and their upstream providers can verify foreign bank identifiers. Financial institutions generally cannot validate foreign country bank identifiers as there are a multitude of formats and standards for these, and this information is not easily obtainable or can be built into their remittance transfer services.

ICBA urges the Bureau to expand the proposed exception to include any and **all** incorrect information provided by the sender that results in a credit to the incorrect account, delay of a transfer, rejection and return of a transfer, or any other loss when the provider has properly executed the sender’s instructions. This provides a fair, equitable allocation of risk to the party best positioned to prevent the mistake.

Effective Date

In The December Proposed Rule, the effective date of the Final Rule has been delayed from February 7, 2013, to 90 days after the proposed rule is finalized. ICBA agrees that a 90 day effective date is sufficient, provided the Bureau incorporates the above suggestions on recipient institution fees, foreign taxes and sender error.

However, if the finalized rule is similar to December Proposed Rule, ICBA strongly urges the Bureau to make the Final Rule effective 240 days after the December Proposed Rule is finalized. As proposed, the recipient institution fee and national tax disclosures requirements will require sweeping changes across multiple applications, and will require new procedure for tracking and monitoring fee and tax information to be used in the required disclosures.

ICBA maintains that such changes put community banks and smaller providers at a competitive disadvantage since they typically receive these services from larger institutions. ICBA recommends an effective of 240 days, 60 days longer than the position in the industry letter to allow for sufficient time for compliance, testing and integration.

In closing, ICBA, again, commends the Bureau for reconsidering these three problematic areas of the Final Rule. We urge the Bureau to revise the disclosure of recipient institution fees and national taxes to a broader, simpler statement that these fees may apply. Additionally, we urge the Bureau to expand the proposed exception to include **all** incorrect information provided by the sender if it results in a delay, rejection or misrouted transfer.

Again, ICBA appreciates the opportunity to comment on this important proposal. Please do not hesitate to contact me at cary.whaley@icba.org or 202.659.8111 with any questions regarding our comments.

Sincerely,

/s/

Cary Whaley
Vice President, Payments and Technology Policy