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Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Regulation E: Docket No. R-1419

Dear Ms. Johnson,

The Federal Reserve Bank of Atlanta ("FRBA") and its Retail Payments Office ("RPO") are pleased to offer the following comments on the proposed amendment to Regulation E.

The proposed amendment, which contains new protections for consumers who send electronic funds transfers to beneficiaries in foreign countries, implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Most of the content of the proposed regulatory amendment is required by the statute, but the statutory language gives the Board of Governors (and after July 21, 2011, the Consumer Financial Protection Bureau) broad latitude to fine tune the disclosure requirements by rulemaking. Section 1073 defines "remittance transfers" as electronic payments originated by consumers in the United States and delivered to beneficiaries outside the United States. The statute requires that remittance transfer providers (RTPs) make certain disclosures to a sender prior to the initiation of a remittance transfer and provide a receipt that contains specified information to the sender at the time a remittance transfer occurs. Section 1073 requires the Board or the Bureau to issue rules to establish error resolution standards and cancellation and refund policies, and to define the liability of a remittance service provider.

FRBA has been an active proponent of international ACH services. Through our FedGlobal ACH Payments service, we act as a gateway between the ACH network in the United States and similar bank-to-bank payment networks located in more than 30 foreign countries. FRBA has also been instrumental in the creation of the International Payments Framework Association, a not-for-profit membership association that facilitates non-urgent cross-border credit transfers between bank accounts in different

countries. FRBA's experience in this area suggests that the creation of international ACH services has benefited consumers in two immediate ways. First, the introduction of bank-to-bank international ACH services that carry workers' remittances, for example, from the U.S. into Mexico, appears to have resulted in an immediate reduction in the cost of U.S.-to-Mexico remittance transfer services by nonbank remittance service providers. Second, the introduction of international ACH services provides consumers, as well as businesses, who want to initiate a non-urgent international transfer of funds, a lower-cost alternative to international wire transfers.

FRBA notes with some concern that certain of the consumer protection provisions of section 1073 and the proposed amendment to Regulation E may prove costly to implement in the structure of international ACH so that consumers are likely to seek alternatives that are less costly but impose greater risk of loss. We are also concerned that the practical effect of section 1073 and proposed Regulation E may be to drive U.S. banks out of the business of offering international credit transfers to consumers. The ultimate effect of section 1073 and proposed Regulation E might be to drive senders in the direction of using prepaid cards or debit cards tied to U.S. bank accounts that can be used to obtain cash at ATMs in foreign countries, or to drive the credit transfer business offshore, such that a sender who wants to move money internationally ends up using an offshore service provider rather than a regulated financial institution or other payment services provider located in the U.S.

FRBA also notes that neither U.S. banks nor the ACH network in the U.S. have a foolproof way of distinguishing between a consumer-originated credit transfer and a business-originated payment. For example, the IAT format used for international ACH payments does not distinguish between consumer payments and business payments. Similarly, if a person uses a bank account for her small business, it is sometimes nearly impossible to distinguish between that person's "consumer" payments and that person's business payments. FRBA believes that it might be useful for the final regulation to provide some guidance regarding the circumstances in which a sender is a "consumer" for purposes of section 205.30(f) and the circumstances in which the originator of an international credit transfer may safely be regarded as not being a consumer.

FRBA offers the following comments with respect to specific provisions in the proposed regulation:

205.30(a): Agent. The proposed regulation defines "agent" as "an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under state or other applicable law," when such a party "acts for" the RTP. It would be useful for the regulation to make it clear that with respect to a consumer-originated remittance transfer that is intermediated by multiple banks, those banks do not "act for" one another unless their agreements create an agency relationship as a matter of law.

205.30(b): Business day. The proposed regulation defines "business day" solely with reference to the RTP and specifically as a day on which the RTP "accepts funds" for sending remittance transfers. Payments rules already offer a hodgepodge of definitions for "business days" and "banking days," not all of which are tied to the bank or company that initiates a transfer. A "funds-transfer business day" under Article 4A of the Uniform Commercial Code, for example, means a day during which the receiving bank is

open. It would be desirable to tie the definition of a "business day" for purposes of remittance transfers to one of the already existing definitions. As applied to ACH and wire transfers, the proposed definition appears to create new ambiguities. What is the day on which a bank "accepts funds" for transfer—the day on which the funds are placed on deposit, or the day on which the bank accepts the sender's order to transfer the funds?

205.30(c): Designated recipient. This definition is crucial to the logic of the regulation, because it is the "location in a foreign country" at which the designated recipient is to receive the funds that defines a credit transfer as a remittance transfer. The regulation could provide a clearer definition of "international payment." Conceptually, a payment might best be treated as an international remittance if the sender is located in the United States and the credit transfer is being made either for credit to an account held at a location outside the U.S. bank or for disbursement at a location outside the U.S. The definition of "remittance transfer," rather than the definition of "designated recipient," is a more logical and effective place to make this important distinction.

205.30(d): Remittance transfer. This proposed definition, as the Board notes in its supplementary comments, now includes transactions, like international wire transfers, until now governed by Article 4A of the Uniform Commercial Code. The Board comes close to asserting that Article 4A, by its own operation, will no longer apply to consumer remittance transfers, but it stops short, observing only that "it appears that...Article 4A will no longer apply." This cautious assessment suggests the possibility of continued application of Article 4A to certain kinds of remittance transfers. FRBA believes that the legal effect of section 1073 and the proposed amendment to Regulation E is clearly that Regulation E will govern all consumer initiated international wire transfers, and that UCC 4A no longer will apply to those payments. As a consequence, the bank to bank intermediation of those payments, which has been structured by interbank agreements that assume the payments are covered by 4A, will need to be restructured by agreements that take account of the fact that 4A no longer applies to remittance transfers that are processed through a wire transfer system. The final rule should be clear about the legal and practical impact of section 1073 and amended Regulation E with respect to consumer originated transfers that used to be subject to Article 4A.

205.31: Disclosures. FRBA strongly supports the goal of providing greater transparency to a consumer who initiates an international credit transfer. At present, however, international bank-to-bank credit transfers, whether made by wire systems or international ACH, typically are not part of a single, "closed loop" network in which the originating bank can know and control every step in a remittance's progress, from the originating bank through intermediary banks to the bank that credits the account of the designated receiver. For example, as of today, FedGlobal is unable to provide a bank that originates an IAT transaction the exact foreign exchange rate that will be applied, the exact amount the designated recipient will receive, the exact sum of all fees that might be deducted from the remittance, or the exact date that funds will be deposited in the recipient's account. In addition, the ability to make accurate disclosures is further impaired when the payment is initiated in advance or on a recurring basis, because the foreign exchange is not taking place until a future date. In order to determine this future exchange rate with certainty, the RTP would need to fix the rate now in some form, which could make such payments cost prohibitive, to the disadvantage of consumers. FRBA therefore favors the approach

taken by section 1073 and the proposed regulation, which permits the use of estimates with respect to the exchange rate, the transfer amount, other fees imposed by intermediaries, other taxes, and the amount of currency that the designated recipient will receive.

Fees. FRBA suggests dividing the concept of "fees" into three discrete parts, each subject to its own prepayment disclosures. First, the fees the RTP charges should have their own disclosure. The RTP may charge the sender fees for originating the transaction, and these fees might or might not be deducted from the notional amount of the remittance transfer.

Next, intermediary fees should have their own disclosure. Intermediary banks may deduct fees from the notional amount of the payment. Ultimately, it would be desirable to eliminate the intermediary banks' practice of deducting fees from the principal amount of remittance transfers, so that all fees paid to intermediary parties would be paid directly or indirectly by the originating banks and not deducted from the principal amount of the credit transfer. However, given the current existence of such fees, the sender should receive a separate disclosure of intermediary fees.

Finally, the amount the designated recipient will receive should have its own disclosure, and it should exclude any fees the recipient will have to pay. The designated recipient may have entered into an agreement with the recipient's bank, permitting the bank to impose a fee for each international payment received by the bank for credit to the recipient's account. In FRBA's view, such fees are a matter for the recipient and the recipient's bank and should fall outside the scope of Regulation E's required disclosures. While the goal of public policy may be to develop a regime in which international payments are originated and received "at par," that is not the current practice in international banking. As a practical matter, banks in the U.S. are unable to know whether or how much a recipient may have agreed to pay to her foreign bank for the receipt of international credit transfers. For that reason, a useful way to define "the amount that will be received by the designated recipient" could be the amount of the transfer, prior to the payment of any fees that the recipient has separately agreed to pay to the recipient's bank and prior to the imposition of any taxes that are the recipient's liability under applicable law.

Foreign Exchange. FRBA supports disclosure of the foreign exchange rate where possible, but there are certain circumstances that may render such a disclosure impractical or even impossible. One such case would be where the sender initiates a payment in advance or on a recurring basis. As discussed before, this would make the determination of the future foreign exchange rate costly. Another case is when the sender designates the receipt of a transaction in one type of currency, but the account is denominated in another type of currency. Under such a situation, the receiving financial institution may convert the currency and deposit it to the account. This type of situation would render it impossible for the RTP to determine what exchange rate will be applied when the payment is sent. FRBA urges the board to either exempt these types of payments from disclosure of the foreign exchange rate or to permit the RTP to provide an estimated foreign exchange rate that reflects the likely fluctuation of the rate over time, based on the recent history of such fluctuations.

Fees and taxes. FRBA believes the phrase "any fees and taxes imposed on the remittance transfer" in 205.31(b)(vi) should be clarified. Disclosures should tell the sender the amount of any fees or taxes, regardless of who imposes them, the sender will pay directly to the RTP or that will be deducted from the amount of the payment. The regulation should not require the disclosure, for example, of the fees that banks charge one another for the handling of a remittance or of taxes that intermediaries pay for a credit transfer, as long as those taxes are not deducted from the amount of the payment. Additionally, fees and taxes imposed in foreign jurisdictions in accordance with foreign regulation may not be ascertainable by the financial institution at the time a payment is made, because they are dependent on the status of the sender or receiver, the taxes are subject to change, or due to some other reason. Under such circumstances, the disclosure of these fees and taxes should be exempt or subject to satisfaction on a best efforts basis.

Safe harbor. FRBA also believes that the regulation should provide a safe harbor for the disclosure of taxes. Because new taxes may be imposed or rates may change without notice sufficient to permit the RTP to disclose up–to-date tax information in real time, the regulation should permit the RTP to disclose the amount of any taxes on the basis of current or historical information available to the RTP through its reasonable efforts to provide accurate disclosures.

Date of Availability. FRBA would support the inclusion of a disclosure of date of availability through estimates. This is because, due to the operation of financial institutions outside a closed loop, it is also difficult, if not impossible, to determine when the funds will be made available in the recipient's account. While the date of receipt by the recipient's financial institution may be determinable, the date when those funds will be made available to the recipient could be subject to foreign regulation or account agreements with the foreign financial institution, which could delay posting to the recipient's account.

205.32: Estimates. The temporary exception that would permit insured depository institutions to provide estimates is a practical recognition that the current bank-to-bank channels for handling international credit transfers do not support the precise disclosures that would be required in the absence of the exception. It is unlikely that the back-room systems for handling bank-to-bank transfers will be updated quickly enough to provide exact disclosures by the time the exception expires on July 20, 2015. It would be useful for the banking industry if the Board would indicate in its final rule whether the Board is willing to consider a five-year extension if the industry is unable to restructure its systems for international credit transfers to provide precise disclosures by 2015. FRBA would also support the inclusion of the date of availability in the allowable estimates, as previously discussed.

FRBA believes that the language of section 1073, specifically the words "subject to rules prescribed by the Board," gives the Board (and after July 21, 2011, the Bureau) broad authority to tailor the disclosure requirements set forth in the statute to the realities of remittance business. FRBA believes that it would be desirable and appropriate for the Board (or the Bureau) to use the broad rule making authority to permit the use of estimates with respect to payments that are initiated in advance or on a recurring basis, as well as transfers initiated in a payment system that does not affect immediate or same day settlement. This exemption could be limited to established, public payment systems, thereby

preventing the circumvention of the required disclosure by agreement between correspondent parties. Not allowing estimated disclosures for payments initiated in advance or payments initiated on a recurring basis would be an impediment to those payments.

205.33: Procedures for resolving errors.

FRBA supports the establishment of error-resolution procedures along the lines proposed in the regulation. However, our experience in international payments underscores the reality that exception processing related to an international payment is expensive, whether the error is the RTP's fault or the sender's. While we support the principle that the RTP should bear the cost of investigating errors, we believe that the definition of "error" should exclude "a sender's request...for additional information or clarification concerning a remittance transfer," unless that request is tied to an allegation of error as defined in 205.33(a)(i) through (iv).

Some errors may defy resolution. For example, if a sender transfers an amount greater than $15 but less than the minimum amount traceable under the law of the recipient country, RTPs could face an impossible task: resolve an error related to a remittance that has effectively disappeared. Meanwhile, some countries prohibit debiting a recipient's account, which could impair the RTP's ability to resolve an error or cancel a transfer.

205.34: Procedures for cancellation and refund of remittance transfers. FRBA believes that this provision will delay the routine processing of remittance transfers by a day. There is a tension between the goal of moving funds immediately in response to the sender's desire to get a remittance to the designated recipient as quickly as possible and the goal of giving the sender time to reconsider. In the interest of the latter, the proposed regulation sacrifices the former. FRBA is concerned that the practical effect of this provision may be to drive consumers who want to make payments as quickly as possible to other remittance mechanisms that are not subject to Regulation E. Additionally, the delay in processing the payment would make the determination of the foreign exchange rate to be applied more difficult and would likely make the foreign exchange rate less advantageous to the consumer.

Under the proposed Regulation, upon cancellation, the RTP must refund the transfer amount and all fees. . While this protects consumers, the right to cancel at no cost dampens the sender's incentive to provide correct information to the RTP, and imposes on the RTP all cost that results if the consumer cancels a payment because of an error or a change of heart on the part of the consumer. FRBA believes that the costs associated with imposing such an open ended right of cancellation will work to the disadvantage of the vast majority of consumers who send remittance transfers. We believe that a more circumscribed right of cancellation might provide adequate consumer protection and impose less cost on all of the users of remittance transfer services.

205.35: Acts of Agents. A principal should be liable for the acts of its agent, as long as the agent acts within the scope of the agency relationship. FRBA believes this is a sound principle of law and business and for that reason favors Alternative A. However, FRBA also believes the regulation should make it clear that the bank-to-bank intermediation of a credit transfer does not in itself establish any kind of agency relationship. For example, FRBA does not act as the agent of an originating financial institution

with respect to the processing and settlement of FedGlobal transactions, and we do not believe that section 1073 or Regulation E should be interpreted as creating such an agency relationship.

In summary, FRBA supports the transparency and disclosure provisions contained in Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We are also concerned that some of the provisions would have the unintended effect of pushing regulated financial institutions out of the business of providing international credit transfer services to consumers because some of the requirements will require complete retooling that might make the service prohibitively costly. As the provider of FedGlobal ACH Payments for the Federal Reserve Banks, FRBA will make every effort to facilitate financial institution compliance with Section 1073 requirements in using the international ACH for credit transfers. In order to avoid the undesirable circumstance of having fewer banks and credit unions offering international credit transfers to consumers, FRBA urges the Consumer Protection Financial Bureau to take into consideration the specific advantages and needs of open payment systems like the ACH which are used by regulated financial institutions in making international credit transfers.

We appreciate the opportunity to comment on the proposed amendment to Regulation E.

Very truly yours,

Marie Gooding