The National Money Transmitters Association, Inc.
12 Welwyn Road, Suite C
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July 22, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov

Re: Docket No. R-1419; RIN 7100-AD76
Request for Public Comment on Proposed Amendment to Regulation E

By Email

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposed Remittance Transfer Rules (RTRs), implementing Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which added a new Section 919 to the Electronic Funds Transfer Act (the EFTA) dealing with 'Remittance Transfers.'

The NMTA is very concerned about the viability of Section 1073 in its entirety. The resulting RTRs, therefore, regardless of how they are handled, must be seen as problematic from their inception.

Since the NMTA's concerns by definition have more to do with Dodd-Frank's requirements themselves than with the manner of their implementation, nothing in these comments should be construed to negatively reflect on the efforts of the extraordinary team of professionals carrying out this implementation. We extend our sincere appreciation for their efforts to make meeting these requirements practical, or even feasible, but we doubt that will be entirely possible.

The New Regulations Are Too Burdensome for This Industry

The NMTA's core field of membership comprises the state-licensed money transmitters of the United States. This includes many different types of companies that get money transmitter or check seller licenses for many different reasons. If you list the names of such licensees across all 50 states, you get a list of about 600 unique entities.

If, for the purpose discussing the RTRs, you subtract from that list the bill payers, check cashers, wholesale financial network operators, strictly-paper-instrument issuers, credit counseling companies and the like that maintain state licenses for various reasons, you get down to a list of about 500 companies.

These state-licensed money transmitters that specialize in remittances, are the Licensed Remittance Companies (LRCs) that make up the population of nonbank financial institutions covered by Section 1073 of Dodd Frank.[1] Some of these companies are large, but most are small-to-medium size businesses, that can ill-afford more regulatory burden. Before Section 1073 of Dodd-Frank, the LRCs were not covered by the EFTA because they were not depository institutions.[2]

We are struck, above all, by the sheer complexity and rigor of the new rules. When regulating different types of financial institutions that perform different sorts of transactions for different types of customers, each requires a different regulatory approach. With these new rules, we are headed down a road of one-size-fits-all. These days, remittances are accomplished by so many different business models and so many different sale and delivery methods, that each situation is very different from the next, and one size clearly does not fit all.

It takes a long time and a lot of reading to understand these new rules, and this will mean a whole new area of law that will require an army of lawyers and compliance professionals to properly implement. Until now, our industry has only had to develop compliance programs for anti-money laundering compliance and state licensure, which have been burdensome in themselves, but unavoidable.

Yet, coming on top of our existing compliance costs and restrictions, the cost of complying with these *new* requirements will be overly burdensome. For this reason alone, we do not feel enough study has been done, to truly discover all the negative consequences these rules will bring to our industry and, by extension, to the public we serve. We frankly cannot understand why the protections of the Paperwork reduction Act and the Regulatory Flexibility Act have not been invoked, and would like to hereby protest this rulemaking on the aforementioned grounds.

This is Not the <u>Way</u> to Regulate This Industry

The Remittance Transfers rules to protect consumers and ensure price transparency have their origin in proposals floated in Congress since at least the year 2001, but which finally found fertile soil in the sweeping reforms of Dodd-Frank.

However, this law ignores the AML aspects of regulating our industry dealt with in two more recent legislative proposals, the MSB Act of 2008, and Rep. Bachus' MSB Compliance facilitation Act of 2009, and foregoes the obvious efficiencies of regulating both for AML and consumer protection under the same regime.

This position should not be construed as opposition to the CFPB. Dodd-Frank's establishment of the CFPB to address the many problems in the various financial industries, was salutary. The

[1] The EFTA's new Section 919 (g)(3) defines a 'remittance transfer provider' as "...any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person..."
[2] According to Section 903(6) of the EFTA, "....the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." and the definition of account at 903(2) is "....a demand deposit, savings deposit, or other asset account..." which refers to an account at a depository institution.

NMTA supports this new agency. No single individual since Ralph Nader has done as much as Ms. Warren has, to protect the American consumer.

But the NMTA firmly believes neither Dodd-Frank nor the EFTA was the appropriate vehicle to deal with the establishment of a functional federal regulatory structure for the remittances industry.

The NMTA - for years - has proposed a voluntary, federal, non-preemptive approach to AML certification. The fight against money laundering is a national problem and should be dealt with on a national level. Right now, the states are bearing an unfair share of the examination burden for AML. As things stand, on the federal level, we are occasionally examined and sometimes prosecuted, but not truly *supervised*, as we are on the state level.

Again, not to be misconstrued, the NMTA believes our industry is very well regulated by the states that license us. But our state credentials have so far not been granted recognition enough to offset the general impression that we are somehow 'high-risk' for money laundering. The literature refers pejoratively to a 'patchwork quilt' of varying state regulations as somehow being proof that our industry is under-regulated. Yet, to the contrary, what was missing was on the federal level.

The regulatory demands on LRCs are always getting heavier. Over the last few years, FinCEN has proposed a radical re-definition of the term *money transmitter*, expanding that definition in its interpretation of what constitutes performing activities, geographical scope, and inclusion of the new technologies (prepaid access, internet and mobile money transfer). Soon, we will be reporting all cross-border transfers of funds of $1,000 or more. FinCEN has just asked all money transmitters to send in a list of their agents, still seeking ways to more closely monitor our vast and ever-changing agent population.

So, amidst all this tightening at the federal level, and despite already being regulated by the various states, we now face the ironic prospect of being regulated by a third government agency, yet still without any comprehensive approach, or credentialing on the horizon. Altogether, this is not a very efficient state of affairs to bring the cost of remittances down.

We urge the CFPB and Congress to look at co-regulation as an option,[i] and consider the virtues of consolidating the federal regulation of the MSB industries, for multiple purposes, along the lines of the MSB Act of 2008, and Rep. Bachus' MSB Compliance facilitation Act of 2009, and that these proposed rules be tabled until such time a comprehensive approach can be drawn up.

The New Rules Are Unnecessary and Unworkable

The 'right to refund' provisions are unworkable and unfair, and may result in service delays and cost increases for consumers. No financial institution can be asked to make a refund until a stop payment can be confirmed, and the procedure to cancel an order is quite detailed, and complicated, and varies from case to case.

Written pre-transaction disclosures are required by the law, but subject to regulations yet to be issued. We urge the Board table this implementation until something more workable can be agreed upon. Although Section 1073 requires the consumer be given a written pre-transaction disclosure, it is not at all clear that this additional step will be feasible, or affordable.

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As to the necessity of it, the benefits of requiring a written pre-transaction disclosure are so vague as to be incomprehensible, and hardly make the expense and confusion of this new procedure justifiable. It is worth quoting at length the study's summary conclusions:[3]

> "Participants were divided as to whether they thought pre-transaction information should be given on paper, orally, or on a screen. Approximately half of the participants wanted the information on paper. Most of these participants felt it would serve as proof of what they were told if they subsequently had a problem. A few participants said that information on paper would facilitate making comparisons between providers. Those participants who did not want pre-transaction information to be provided on paper felt that it would unnecessarily complicate a simple process, was unnecessary for anyone familiar with the process of sending money, and opened up the possibility that if they received too many papers they might confuse the papers and accidentally discard the one with their confirmation code (which is necessary for the recipient to pick up the money)."

As for error resolution:

> "In the vast majority of cases, participants said their problems had been resolved fairly quickly, and that the recipient had eventually received the money. The most common problem was that the agent or sender had spelled the recipient's name incorrectly..."

You will see from many other commenters the many reasons why these rules are completely unworkable. Industry was not consulted in the writing of these rules. We can only be grateful for this opportunity to comment, and pray, at this point, that industry warnings are heeded now.

In summary, altogether, this was not a situation that cried out for the establishment of a complicated and costly regulatory regime, so it is sad to see that, after the financial crisis and all the ills of the regulatory and financial systems, we are forced to waste effort dealing with this sad example of mis-regulation handed to us by the Congress of the United States.

Thank you once again for the opportunity to comment. Despite the many inconsistencies and adversities brought about by Section 1073, as noted in this letter, the NMTA believes in maintaining full compliance, and stands ready to help out in any way we can.

Sincerely,

David Landsman

David Landsman
Executive Director

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[3] Summary of Findings
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_%28FINAL%29.pdf

[i] See http://en.wikipedia.org/wiki/Securities_Exchange_Act_of_1934
Self-regulatory organizations (SRO)

"In 1938 the Exchange Act was amended by the Maloney Act, which authorized the formation and registration of national securities associations, which would supervise the conduct of their members subject to the oversight of the SEC. That amendment led to the creation of the National Association of Securities Dealers, Inc. - the NASD, which is a Self-Regulatory Organization (or SRO)."

The NASD became FINRA which, along with the National Futures Association, are the only two examples of SROs I could find in the financial industries. The obvious other examples of SROs are the professional organizations that control the practice of law, medicine, dentistry and, perhaps, accounting, on the state and national level.

Also see *The Origin of the NASD*, by Wallace Fulton, at
http://www.nmta.us/site/DocsPosted/CFPB/HistoryoftheNASD.pdf,

and relevant Congressional testimony from 2002, at
http://www.nmta.us/site/DocsPosted/CFPB/Glauber2002.pdf