NAVY FEDERAL Credit Union

Office of the President

July 20, 2011

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

Re: Docket No. R-1419; Electronic Fund Transfers

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments on the Federal Reserve Board's (Board) proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act(EFTA). Navy Federal is the nation's largest natural person credit union with $44 billion in assets and 3.7 million members.

We support the elimination of acts and practices that are truly unfair or deceptive, however, we firmly oppose unwarranted controls on features of electronic services that would interfere with free market supply and demand. We offer international funds transfers as a convenience to our members. Due to the impending regulation we may be forced to rethink our business platform, such as whether we must charge higher fees or eliminate international funds transfers service altogether. If implemented, this proposal may hurt the very consumers it purports to help.

Navy Federal originated 19,248 international wires in 2010. We currently charge $25 per wire regardless of the amount and charge no additional fees. Approximately 75% of our international wires are sent for amounts between $500 and $10,000, 16% under $500 and the remaining 11% between $10,000 and $500,000. We do not believe that the majority of the international wires we send would be considered the type of remittances this legislation is intended to protect. Nor do we believe that financial institutions who provide international transfers as a low-cost, added service to their members, rather than as a primary business function, should be subjected to burdensome regulations.

The purpose of the remittance transfer provisions contained in the Dodd-Frank Act was to protect senders of remittance transfers, who are "not currently provided with adequate protections under federal or state law."[1] We believe the proposed rule is likely to pose more

[1] S. Rep. 111-176, at 179 (2010). the Senate version of the bill that became the Dodd-Frank Act, states that the new remittance transfer rules will "establish minimum protections for remittances sent by consumers in the United States to other countries."

harm to consumers by creating an environment that will discourage institutions from providing remittance transfer services to their customers or make these transfers more costly. If as a result of this proposed rule, many originators no longer offer this service, this in turn will limit the number of options consumers will have available to them. The proposed rule itself has acknowledged that an increase in diversification and competition within the remittance transfer market has contributed to downward market pressure on prices that has occurred in the last ten years. Therefore, we believe decreasing this diversification and competition will result in an increase in market prices. We urge the Board to consider the unintended consequences of this proposed rule.

We do not believe wire transfers should be included within the scope of this proposal. Wire transfers are exempt from EFTA and instead are governed by state law through the enactment of Article 4A of the Uniform Commercial Code (UCC). Article 4A primarily governs the rights and responsibilities among commercial parties to a wire transfer, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders. UCC article 4A-108 provides that Article 4A does not apply to, " a funds transfer, any part of which is governed by the EFTA". Under EFTA Section 919, wire transfers sent on a consumer's behalf that are remittance transfers will now be governed in part by the EFTA. As a result, it appears that Article 4A will no longer apply to such consumer wire transfers. Therefore, providers of international wire transfers may no longer be able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer. Furthermore, bank to bank wires are rarely the instrument used by consumers for remittances, rather wires are used by consumers to transact business. We strongly urge the Board to remove wire transfers from the definition of remittance transfers.

Proposed section 205.33(a) sets forth the five categories of remittance transfer errors. This Section provides that in general, a remittance transfer provider's failure to make funds available to the designated recipient by the date of availability stated on the receipt would constitute an error. We believe that this category should be altered to reflect the date that the remittance transfer provider makes the funds available to the recipient institution, and that a provider should not be subject to liability for an error for actions taken by the receiving institution that may delay when the funds become available to the designated recipient.

Proposed commentary 205.33(a)(4) provides the following relevant examples of a provider's failure to make funds available by the stated date of delivery:

i. Late or non-delivery of a remittance transfer;
ii. Delivery of funds to the wrong account;
iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient; and
iv. The recipient agent or institution's retention of funds in connection with a remittance transfer, instead of making the funds available to the designated recipient.

We believe that a provider should not be liable in circumstances in which funds are delivered late or deposited into the wrong account by fault of another institution involved in the transaction (that is not an agent of the provider). In the preamble to the proposed rule, the Board states that it believes it is appropriate for the fraudulent pick-up of a remittance transfer to constitute an error under the Proposed rule because the remittance transfer provider, rather than the sender, is in the best position to ensure that a remittance transfer is picked up only by the person designated by the sender. We strongly urge the Board to reconsider this view as it does not reflect the reality of transfers made through an open network. Specifically, we do not believe that a provider should be responsible for fraud that results in the pickup of a remittance transfer by a person other than the designated recipient where a provider is unlikely to know all of the intermediary institutions involved in a transfer or the final institution that will make the funds available to the designated recipient. Indeed, under such circumstances, the provider would not be in a better position to ensure that a remittance transfer is picked up by the appropriate person. In addition, the remittance transfer provider, is not in a position nor does it have the ability to determine whether the designated recipient is the intended recipient of the funds.

We strongly support disclosing all the fees prior to any transaction a consumer may make. However, many Originators, including ourselves, do not know the amount of currency that a designated recipient will receive, the exchange rate that will apply, and the fees or taxes that will be deducted when a remittance transfer is sent. This is because when Originators do not have a correspondent relationship with these intermediary or receiving institutions they do not communicate directly. If Originators are required to disclose all fees and exchange rates, it is only reasonable that the resulting regulation require these correspondent institutions be required to publish exchange rates that would apply to remittance transfers received by them, as well as any fees and taxes that would be deducted from the amount of the remittance transfer. Without having this information become readily available, this proposal would impose a burden upon Originators to determine something over which they have no control, making it near impossible for many Originators to continue to offer this service.

We recognize that the proposed rule provides a temporary exception allowing remittance transfer providers, who are insured institutions, to provide estimates of the amount to be received by a designated recipient. This would apply, only if providers are unable to determine for reasons beyond their control, the applicable exchange rate or the applicable fees or taxes that may be deducted from the remittance transfer. This exception expires on July 20, 2015. We believe sunsetting this exception at anytime would greatly damage the ability of insured institutions to send remittance transfers to foreign countries. The Board has recognized by establishing this temporary exception that many financial institutions will not have the ability to determine these exact amounts. The Board has indicated that it expects financial institutions to reach agreements with correspondent institutions. However, even when a remittance transfer provider participates in a correspondent relationship with another financial institution, that does not necessarily give the financial institution more knowledge or control over the exchange rate that the correspondent will use. We urge the Board to extend the temporary exception indefinitely.

Proposed Section 205.33 implements new error resolution requirements for remittance transfers, and requires a sender to provide notice of an error within 180 days of the promised delivery date of a remittance transfer. We do not believe this 180 daytime frame is consistent under the general error resolution provisions in Regulation E, 205.11(b)(3). We believe 60 days, rather than the proposed 180 day error resolution time frame, provides sufficient time for a sender to review the additional information provided by the remittance transfer provider and determine if an error has occurred in connection with a transfer.

We appreciate the opportunity to provide comments on the Board's proposal to the EFTA. If you have any questions, please contact Charla Tompkins, Senior Policy Analyst, at (703) 206-2672.

Sincerely,

Cutler Dawson

Cutler Dawson
President/CEO

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