Comments submitted by
Center for Responsible Lending and
National Council of La Raza

to the Consumer Financial Protection Bureau

RE: Electronic Fund Transfers (Regulation E)
Proposed Remittance Transfer Rule

Docket No. CFPB-2012-0050
RIN 3170-AA33

January 29, 2013

Thank you for the opportunity to submit comments concerning the proposed revision of the Consumer Financial Protection Bureau (CFPB or the Bureau) to its final rulemaking on remittance transfers under the Electronic Fund Transfers Act (EFTA).

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a nonprofit loan fund. SHCU has operated as a North Carolina-chartered credit union since the early 1980s. In 2008, Self-Help founded SHFCU to expand Self-Help's mission. In total, Self-Help has provided over $6 billion of financing to over 70,000 low-wealth families, small businesses, and nonprofit organizations in North Carolina and across America and serves over 80,000 members through 30 credit union branches in California, North Carolina and Chicago. Self-Help provides remittance services, with a particular focus on immigrant communities.

The National Council of La Raza (NCLR)--the largest national Hispanic civil rights and advocacy organization in the United States--works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas--assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has regional offices in Chicago, Los Angeles, New York, Phoenix, and San Antonio.

Overview

On December 31, 2012, the CFPB published a proposed rule that would refine a final rule issued by the Bureau earlier in 2012, implementing Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The proposal addresses three important issues. First, the proposal would revise the error resolution provisions when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. Second, the proposal would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. Third, the proposal would provide additional flexibility regarding fees imposed by a designated recipient's institution for receiving a remittance transfer in an account.

We strongly appreciate the CFPB's willingness to address these three issues, and believe that the proposed rules will permit remittance providers to provide crucial services to immigrant communities in a transparent way as provided by the rest of the rule. As discussed below, we believe that the CFPB's proposal with respect to the first two issues will address the liability and taxes concerns that the previous rule presented, with a couple clarifications. With respect to the third issue, however, we recommend that the CFPB require that disclosures include a statement at the bottom of the form that the amounts noted may not reflect any additional fees and charges that may be assessed by the recipient's financial institution, rather than including disclosures of the exact amount or an estimate of these account fees and charges. Providers will rarely know the exact amount of account fees, and the benefit of such estimates is minimal relative to the practical difficulties and potential unintended harms of the proposed rule.

Liability

We support the CFPB's first proposed revision to error resolution provisions when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. The revision to the proposed rule gives remittance providers the confidence to continue to offer international remittance services, regardless of whether these services are offered through a closed loop or open loop network, and hence will greatly benefit consumers.

Under the proposed revision of the final rule, the definition of "error" would *exclude* a failure to make funds available to the designated recipient by the disclosed date of availability, where such failure results from the sender having given the remittance transfer provider an incorrect account number. The proposed revision does not otherwise change the scope of the definition of "error", which still includes, among other things, the late delivery of funds, the total non-delivery of a remittance transfer, and the delivery of funds to the wrong account. We believe the proposed rule achieves an appropriate allocation of risk, with the responsibility on providers to resolve most errors, thereby providing incentives for providers and their business partners to develop policies, procedures, and controls to reduce and minimize errors, while at the same time limiting provider liability when a sender provides an incorrect account number.

We support the proposed change in liability because, after significant work on this topic, we are convinced that it would be extremely difficult--generally impossible--for financial institutions to verify that an ACH or wire transfer is going to an account number that is associated with a particular name. Even domestically, a receiving institution will not provide a name match to an account number to the sending institution for privacy reasons and to prevent fraud on its customers; this is even more true internationally, where privacy and fraud concerns are even greater.

In addition, ACH stands for "automated clearing house"; no human being reads the payment order listing the account number at the recipient financial institution to process the payment and credit the account. This automation is why ACHs are so cheap and reliable, and automation is only possible by relying on account numbers. Also, names are a poor way to identify accounts in any case. People may differ on how they spell their name (for example, Becky as opposed to Rebecca) and that variation may not correspond with the recipient's account number; there may be issues relating to language translation (for example, translations from Latin languages to languages with different characters); there may be differences on the order of names by country; and there may be limitations on the number of characters in a field that prevent a person's full name from being entered. Further, language barriers and time zones create difficulties in communication.

As a result of all these factors, the sender, who is in communication with the designated recipient, is in a much better position to confirm the account number instructions than the financial institution.

In addition to the practical problems in placing liability on the financial institution, this liability allocation would promote fraud, potentially dramatically increasing the prevalence of money going to the "wrong" account and dramatically decreasing the prevalence of getting the money back. It would not be difficult for a consumer to intentionally provide the account number of a confederate overseas who is not the designated recipient by name. The confederate would empty the account quickly once the funds arrive. Since under error resolution the customer has 180 days from the disclosed date of funds availability to notify the financial institution of an error, it would be impossible to retrieve the funds.

It is true that if the financial institution can prove fraud, it does not need to return the money. However, this provision is not one that would likely benefit Self-Help Federal Credit Union, for example. SHFCU would not want to accuse its members or potential members of fraud in the first place. And all it would likely know in a particular case is that it remitted funds to an account that doesn't match the name provided and it could not get the funds back; proving fraud across borders would be extremely difficult and costly even if SHFCU wanted to. Since the remittance rule applies to remittances of any size, and all funds remitted over a 180 day period are at risk of loss by a simple customer claim, the amount of this fraud could be substantial.

The fact is that ACHs that land in an unintended account number are not at all common today. When an ACH credit transaction occurs to an invalid account number, the funds are returned unpaid, then returned to the sender or resent to the correct account, and no issue of liability arises. Without the liability change of the proposed rule, SHFCU would, if it could continue to provide remittance services at all, at a minimum need to limit to whom it provides remittance services. This "creaming" would be contrary to its mission of providing affordable banking services to all its members, especially its low-income and immigrant customers. Given how rare this problem is under current liability rules, we believe that CFPB has correctly weighed the balance in the proposed rule toward returning to how liability is allocated in both consumer ACHs and wires, thus permitting institutions like SHFCU to continue to serve all their members.

Regarding the question posed in the proposed rule about whether wrongly instructed routing numbers -- financial institution identifiers -- should be treated the same as account numbers for liability purposes, we believe that the answer is yes. Remittance providers such as SHFCU will not be able to verify financial institution identifiers in many cases, and as with account numbers, the wrong identifier number could result in funds being placed in the wrong account due to no fault of the provider. This rule applied to financial institution identifiers would not have significant adverse consequences since it is even more unlikely than if the account number is at fault that it would result in a remittance going to the wrong account. Since both the financial institution and account identifiers together would need to correspond to another person's account, in most cases the funds would simply bounce back.

We also support the requirement that the remittance provider notify the senders of the risk that their funds could be lost, though CFPB should be sure that this warning is provided through a clear and conspicuous notice on the disclosure form. We further support CFPB's proposed requirement that financial institutions investigate reported errors and promptly use reasonable efforts to attempt to recover funds that are deposited in the wrong account. This level of provider effort to alleviate problems caused by faulty account numbers is fully appropriate.

Foreign taxes

We fully support the CFPB's second proposed revision, which would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. It would be helpful in this regard if CFPB would clarify that if a remittance provider applies the national tax rate to a remittance, it has met its obligations to disclose taxes. We believe this is the intent of the provision, but clarifying it would be beneficial. Applying the full tax rate is the most conservative assumption that the provider can make, which assumes that no exemptions or exceptions apply. Applying the national rate also avoids a complicated and burdensome inquiry of the sender about different variables in the transaction that may reduce the tax rate in a particular case. The complexity of determining when exemptions or exceptions apply would likely cause different providers to estimate different tax rates, harming comparison shopping.

This simplification will remove significant complexity and uncertainty regarding disclosures and estimates of local and other sub-national taxes. While it would be ideal for consumers if providers could easily disclose all taxes, the reality is that any further taxes beyond the country-level taxes are extremely difficult to determine in a comprehensive and accurate manner, while generally being only a small amount of the total tax charged at the country level and the amount remitted.

The proposed rule's simplification and clarity permitting providers to simply disclose country-level taxes will provide a manageable and meaningful foreign tax disclosure requirement for providers, and will add consistency to disclosures provided by the many different remittance providers subject to the rule. CFPB should continue to monitor the market, however, to ensure that remittance providers do not mislabel financial institution fees as local taxes and therefore avoid disclosure of relevant fees.

Account fees

We believe the CFPB's third proposed revision warrants further consideration. We do believe that it would be possible for remittance providers to comply with the estimation procedures provided in the proposed rule. These estimates are a tremendous advance over the existing final rule.

We are grateful that the Bureau has recognized the impossibility of obtaining accurate and real-time account fee information from every remittance recipient's financial institution across the world. U.S. financial institutions will not know the account fee schedules for every bank or credit union abroad, nor will they know the specific account status of a remittance transfer recipient, which could impact the fees charged to a recipient. The inherent obstacles include language barriers; time zone differences; the cost of staff time to research these fees and charges; no guarantee of cooperation for competitive reasons or receipt of accurate information from foreign banks, which are not required to share such information; and privacy concerns that the foreign financial institution might have with releasing information about their customers.

In order to address these constraints, the Bureau provides for two methods of estimating recipient financial institution account fees. However, both methods are problematic. The proposed account fee disclosure requirement will be difficult for U.S. financial institutions, while at the same time offering little benefit – and perhaps even some harm – to consumers.

The proposal's first method of estimating recipient institution fees and charges allows providers to rely on a sender's representations regarding the variables that affect the amount of fees to be imposed by a recipient's financial institution. There are two problems with encouraging this type of reliance. First, if the sender knows what the fees applied to the recipient's account will be, then it is likely the sender is getting that information from the recipient. In such a case, both sender and recipient know the account fees, and requiring the provider to disclose them does not impart knowledge to either. Second, without being told by the recipient, it is likely that a sender will not know what the variables or fees are, since U.S. financial institutions often cannot obtain foreign financial institution account fee information either, and would provide information that may be just a guess. The information provided then will be of no value to the sender or the recipient, and will only serve to confuse matters when the recipient compares the amount received in his or her account against the amount disclosed.

The proposal's second method of estimating recipient institution fees and charges would permit the provider to disclose an estimate of the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variables, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. If the provider cannot obtain such fee schedules or information from prior transfers, the proposal would allow a provider to rely on other reasonable sources of information. We appreciate the flexibility provided on what constitute reasonable sources, and as a result providers, particularly larger ones, will be able to use reasonable means to estimate fees, and therefore will be able to provide remittances in conformity with the rule.

However, this second method of estimating account fees and charges is still problematic. Under this method, U.S. financial institutions will each, individually (unless they can find and pay a reliable third party to provide this information), have to engage in time consuming and costly research regarding foreign financial institution account fees for every country to which they send a remittance transfer, in order to document the sources of data that will provide a basis for their estimates. This inquiry will be most difficult for smaller providers. Then, to facilitate compliance, the provider will have an incentive to disclose the highest possible recipient institution fees (according to that particular provider's sources and calculations).

The estimates of fees will vary, sometimes widely, and the consequence will be inconsistencies and confusing differences in estimated account fees among various providers. Providers who can justify low estimated fees will have a competitive advantage over those who are more conservative, because it will appear as if they are charging consumers less, undermining the consumer's ability to engage in accurate comparison shopping. In any case, the provider efforts required to comply with the rule substantially outweigh the limited to nonexistent benefit to senders these estimates provide.

The Bureau's proposed revision to the final rule states four goals of requiring account fee estimates, goals that can better be met by our alternative solution of requiring a statement at the bottom of the disclosure form warning senders that recipient institutions may charge account fees.

First, the Bureau states that this fee information provides valuable consumer benefits by ensuring that senders are aware of the impact of back-end fees, including knowing whether the amount received will be sufficient to pay important expenses. However, estimates created by U.S. financial institutions using imperfect data, and incentivized to provide *over*-estimates, are likely to be inaccurate and unhelpful in this regard. Further, it is the recipient who is in the best, if not only, position to know what these charges are, and this is the individual actually paying the expenses; estimates by remittance providers will not help. The goal of ensuring that senders are aware of the importance of back-end fees without sowing confusion about what these charges are would be better accomplished by requiring the statement that fees may be charged.

Second, the Bureau states that these disclosures will provide senders with greater transparency regarding the costs of remittance transfers, and assist senders in deciding whether to send funds for cash pick-up or to an account, or among accounts at different recipient financial institutions. Again, we believe the proposed revision to the rule will actually create confusion by creating inconsistency among methodologies used to create these estimates, and undermining a sender's ability to compare costs among destinations. Since providers will likely use estimates that apply to many foreign financial institutions, estimates will give the misleading impression that each institution charges the same amounts, reducing the incentive for senders and recipients to investigate what the recipient's financial institution will charge compared with other alternative destinations.

Third, the Bureau states that eliminating the requirement to disclose recipient institution fees would create inconsistency between the disclosures provided for transfers where fees are imposed for receiving a transfer in an account, and those provided for closed networks where fees are charged by paying agents and known. We agree that if account fees were readily known, disclosing both sets of fees would provide consistency of treatment. However, given the fact that account fees are not generally knowable by the remittance provider and so estimates will be used, often poor ones, disclosing account fees will do nothing to establish consistency. A statement at the bottom of the disclosure form warning senders that the recipient's institution may impose fees will warn senders to check the actual fees that may be charged in order to compare closed and open network options.

Finally, the Bureau notes that consumer participants cited unexpected third-party fees as a source of concern. We definitely agree that there should be full disclosure of fees imposed by third party intermediaries, with whom consumers have no relationship. However, a recipient's personal account fees and charges should not be considered unexpected third-party fees – the recipient has a contractual relationship with his or her financial institution establishing what these fees will be. These account fees are expected by and transparent to the recipient, and warning provided on the form will ensure they will not be unexpected.

Conclusion

In sum, we support the Bureau's proposal regarding liability and taxes, with a couple clarifications, and appreciate the significant advance of the proposal regarding account fees. We believe, however, that requiring a notice on the disclosure form that account fees imposed by the recipient's financial institution may apply is a better solution than requiring estimates, greatly reducing burden to remittance providers while providing senders with the best practicable information available.

For additional information or to ask questions about this comment, please contact Eric Stein (Eric.Stein@self-help.org) or Catherine Petrusz (Catherine.Petrusz@self-help.org) at Center for Responsible Lending, or Janis Bowdler (jbowdler@nclr.org) at National Council of La Raza.