

**COMMENTS**  
to the  
**Bureau of Consumer Financial Protection**  
**12 CFR Part 1005**  
**Docket No. CFPB-2014-0008<sup>1</sup>**  
**RIN 3170-AA45**  
**Electronic Fund Transfers**  
**Changes to Remittances Protections**

by the  
**National Consumer Law Center**  
on behalf of its low income clients

**June 6, 2014**

The **National Consumer Law Center**<sup>2</sup> ("NCLC") submits the following comments on behalf of its low-income clients.

The Consumer Financial Protection Bureau ("CFPB") has proposed several changes to the regulations and Official Interpretations governing remittance transfers. We have concerns regarding three of these changes:

1. *The proposed extension by five years allowing financial institutions to continue to provide estimates of the exchange rate and other costs for remittances made directly from accounts at these institutions.*<sup>3</sup> We are not convinced that an extension is in consumers' best interests. At a minimum, we recommend that financial institutions that choose not to give firm price information be required to inform the consumer that firm pricing, as well as better protection from errors, is available from other remittance providers.
2. *The proposed amendment to the Official Interpretations that faxes are considered writings for purposes of providing the disclosures required of a remittance provider.*<sup>4</sup> Faxes are already a permissible method of

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<sup>1</sup> 79 Fed. Register 23233, April 25, 2014. <http://www.regulations.gov/#!docketDetail;D=CFPB-2014-0008>.

<sup>2</sup> The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of twenty practice treatises and annual supplements on consumer credit laws, including *Consumer Banking and Payments Law* (4th ed. 2009), which has several chapters devoted to electronic commerce, electronic deposits, access to funds in bank accounts, and electronic benefit transfers. NCLC also publishes bimonthly newsletters on a range of topics related to consumer credit and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal with the electronic delivery of government benefits, protection of exempt benefits, predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s. NCLC's attorneys regularly provide comprehensive comments to the federal agencies on the regulations under these laws. These comments are written by NCLC attorney Margot Saunders.

<sup>3</sup> The exception for financial institutions is contained in 15 U.S.C. §16930-1(a)(4)(A).

<sup>4</sup> Official Interpretations, Section 1005.31(a)(2)-5.

communication if the consumer consents and can receive faxes under the E-Sign Act requirements, but they should not be permitted outside of the E-Sign framework.

3. *The proposal to allow certain communications from remittance senders to providers to be considered inquiries rather than requests to initiate a remittance transfer.*<sup>5</sup> The CFPB should require that the consumer be notified that the communication has been treated as an inquiry, and that no remittance will result absent further communication between the consumer and the provider.

## **I. Allowing the Extension for Financial Institutions to Continue to Provide Estimates.**

The Supplementary Information to the Proposed Regulations indicates that the CFPB engaged in interviews of financial institutions regarding the question of whether to permit financial institutions to continue for five years to provide estimates of the critical information such as the exchange rate and the total amount to be received by the recipient. The question the CFPB asked, set forth in the Dodd-Frank statute, was whether “the termination of [the exception] would negatively affect the ability of remittance transfer providers [which are financial institutions] to send remittances to locations in foreign countries, . . .”<sup>6</sup>

It is unfortunate that the CFPB limited itself to that question. Another, equally relevant question, would be what impact would there be on consumers if the sunset date for estimates is not extended. In particular, would there be a significant decrease in the availability of remittances, and would consumers be harmed if some financial institutions chose not to provide remittances in those instances in which they had to provide estimates.

First, it is important to recognize that remittances are widely available to consumers outside of financial institutions. Especially for smaller remittances, we believe that financial institutions play a relatively small role in serving the remittance market. However, it would be helpful for the CFPB to study and disclose the relative roles of the different kinds of remittance providers, as well as the differences in the costs that are charged by these different providers.

Second, to the extent that some consumers do currently use financial institutions for remittances, would those consumers be harmed if they could no longer send remittances directly from their bank accounts? This may be the case. But the CFPB has not shown this. To prove this point, we need to know the availability of alternatives, the costs of those alternatives, and the relative conveniences of both types of providers.

When a sender uses a financial institution to send a remittance from an account, she is not protected from a mistake when providing the recipient’s information (*see* 12 C.F.R. § 1005.33(a)(iv)(D)), yet she would be protected from such a mistake when using a non-bank remittance provider. This is a significant additional risk, which reduces the value of using transfers from financial institutions as a means of sending remittances. Moreover, it seems likely that the costs for sending remittances from financial institutions is no less – and possibly more – than sending them from non-financial institutions.

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<sup>5</sup> Official Interpretations, Section 1005.31(a)(3)-2.

<sup>6</sup> 15 U.S.C. § 1693o-1(a)(4)(B).

At the least, financial institutions that avail themselves of both exceptions – the reduced liability for mistaken transfers into the wrong account, as well as the less reliable information about the real costs of the remittance – should notify remittance senders that these transactions have more protections elsewhere. In other words, senders choosing to use their bank as a conduit for a remittance should be informed that, if they used a non-bank provider for the remittance, they would be provided exact information about the amount received – rather than an estimate – and there would be full coverage against a mistaken transfer.

Based on this logic, we recommend that the CFPB –

1. Engage in an inquiry to determine whether disallowing financial institutions to provide estimates, such that these institutions would be less likely to provide remittances, would be actually harmful to consumers; and
2. Require financial institutions using estimates and enjoying the reduction of liability for mistaken transfers to provide a notice that non-bank remittance providers give exact information, rather than estimates, and have full liability for mistakes.

## **II. Considering Faxes As Writings for Purposes of Disclosures Would Avoid Important E-Sign Protections**

The docket includes a proposal to add language to the Official Interpretations to allow faxes to be considered writings for purposes of providing disclosures required of remittance providers. (Proposed Official Interpretations Section 1005.31(a)(2)-5.) If by doing this, it is the CFPB’s intent to allow faxes to be provided without the consumer consent required by E-Sign to receive electronic disclosures, there are significant problems with this proposal.

Faxes are technically electronic records.<sup>7</sup> As such, they replace writings required by federal law to be provided by consumers only upon full compliance with the Electronic Signatures Act (“E-Sign”).<sup>8</sup> Under E-Sign, before an electronic record can replace a writing requirement, consumers must consent to receive the electronic record pursuant to E-Sign, “in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.”<sup>9</sup> This is federal law.

The proposed new language for the Official Interpretation does not even limit the use of faxes for disclosures to consumers to situations in which the consumers have faxed the request for the remittance to the provider. This is problematic because it could purportedly allow providers to fax disclosures to consumers without having first obtained the consumer’s consent to receive the disclosures by fax.

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<sup>7</sup> See Uniform Electronic Transaction Act, § 2, comment:

“Information processing systems, computer equipment and programs, electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning, and similar technologies all qualify as electronic under this act.” (Emphasis added.)

<sup>8</sup> 15 U.S.C. § 7001, *et seq.*

<sup>9</sup> 15 U.S.C. § 7001(c)(1)(C)(ii).

The better – and safer – practice would be to only permit providers to use faxes for disclosures when the consumer has consented to receive disclosure by fax, pursuant to E-Sign. To do this, no change in the current language of the Official Interpretations is necessary – as E-Sign already governs the transaction. If the consumer has consented, pursuant to E-Sign, to receive a fax, then the fax is considered a writing by operation of E-Sign.

### **III. Treating Requests for Remittances as Inquiries**

This docket also includes a proposal to add language to the Official Interpretations which would permit remittance providers to treat some communications as inquiries, rather than requests for a remittance. (Official Interpretation Section 31(e)-1.) With this designation, the remittance provider will not be initiating the remittance. This fact should be made clear to the consumer. We do not object to this proposal *so long as the consumer is notified that the communication has been treated as an inquiry, and that no remittance will result absent further communication between the consumer and the provider.* Without requiring this notice, it is quite conceivable that consumers will misunderstand the result of the communication. Notice of the limitation to an inquiry is simple enough to make, and should be a required accompaniment of the provider's determination.

Thank you for the opportunity to submit these comments. If you have questions, please contact Margot Saunders at [msaunders@nclc.org](mailto:msaunders@nclc.org) or (202) 452-6252 x 104.