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January 30, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20006

Re: Electronic Fund Transfers (Regulation E); RIN 3170–AA33

Dear Ms. Jackson:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding the Consumer Financial Protection Bureau's (CFPB's) proposal to address provisions of the international remittance transfers final rule. We filed a separate comment letter on January 15, 2013 on the delayed effective date. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,000 state and federal credit unions, which serve about 95 million members.

CUNA Commends the CFPB for Delaying the Effective Date of the Rule

On January 22, the CFPB announced that it is delaying the effective date of the international remittance transfers rule that was set to take effect February 7, 2013. The agency has made appropriate use of its statutory authority and proposed to postpone the rule until 90 days after the current proposal is adopted and published, in recognition of the need for more time by covered entities to get ready for compliance. This is a reasonable action and we applaud the agency for its efforts to consider the impact of the rule on entities providing international remittance transfer services. Even so, reflecting comments of our members, we remain concerned that some credit unions will decide they need to exit the service altogether, which is why we respectfully urge the agency to reconsider the exemption level.

CUNA Urges the CFPB to Revisit the 100 Transfers Per Year Exemption Threshold

We realize that this issue in not among those that are the subject of the agency's current request for comments. However, no issue regarding

international remittance transfers is more important to credit unions than the exemption level, and we urge the agency to reconsider one aspect of this issue.

Under the final rule, all remittance transfer providers would be subject to the same exemption threshold. Yet based on information credit unions have provided to us, a number of credit unions either only recoup their costs with no additional income from international remittance services or they actually lose money in providing the service. They continue providing these services, however, as an accommodation for their members because their members look to their credit union to provide these transfers.

In that connection, the rule should differentiate between entities that are profiting as a result of offering remittance transfers as a business line or a product, as opposed to credit unions that offer international remittance transfers as a service to their members who prefer to conduct their financial business with their credit union.

We believe the agency can and should invoke its exemption authority to make such a distinction in the rule regarding the threshold. (We have attached a memorandum that discusses the agency's exemption authority as it relates to credit unions. The memo supports the use of this authority to provide greater regulatory relief under the international remittance transfer rule.) It is not the purpose of this letter to launch into an extensive discussion of the agency's exemption authority but the fact remains that the agency has ample statutory authority to reconsider the international remittance transfer rule's exemption threshold.

For example, Section 1022 of Title X of the Dodd-Frank Act authorizes the CFPB to exempt any class of covered person from any provision of that title (which includes the provisions on remittances) or any rule issued by the CFPB under that title. The Electronic Fund Transfer Act, which the remittance provisions in the Dodd-Frank Act amend, also provides relevant exemption authority for the CFPB.

In another context, the agency is considering exempting nonprofit organizations; the new proposal issued January 10, 2013 includes certain exemptions for non-profit creditors from a number of the provisions of the ability to repay rule.

In light of the broad agency's statutory exemption authority, which was invoked to set the current threshold, we urge the CFPB to revise the rule regarding the exemption. We urge the agency to allow a much higher threshold for credit unions that are not receiving income from their international remittance transfer activities comparable to what for-profit

remittance providers receive. Such credit unions should be allowed to send up to 1,000 transfers per year and still receive an exemption.

Credit unions were assured when the CFPB was established that unregulated entities would be brought to the same level of regulation that credit unions then faced, not that credit unions would face new requirements that in the case of remittances, may mean the end of their involvement with this service.

We urge the agency to reconsider this issue and create a clear distinction in the rule between the treatment of for-profit remittance transfer provisions and credit unions that do not charge fees at all or that charge less than the fees for-profit providers charge for comparable services.

CUNA Commends the CFPB's Consideration of Additional Flexibility on the Remittances Regulation

In addition to postponing the effective date of the rule, the CFPB is proposing increased flexibility regarding three elements of the final rule. We appreciate that the proposal addresses concerns that CUNA, our International Remittances Working Group, leagues and credit unions have raised regarding implementation of Section 1073 of the Dodd-Frank Act on international remittance transfers. We support much of the agency's proposal but have questions and concerns about certain aspects, as discussed below.

CFPB Should Facilitate Disclosure of Foreign Taxes and Fees Imposed by Other Financial Institutions

Under the proposal, the agency would permit additional flexibility on foreign tax and recipient institution fees, by permitting remittance providers to base fee disclosures on published bank fee schedules and by providing further guidance on foreign tax disclosures where certain variables may affect tax rates, such as disclosing the highest tax amount.

We generally support this approach but believe the CFPB is in the best position to compile and maintain a database of foreign taxes and recipient institution fees that can be relied upon by all remittance transfer providers, instead of requiring each remittance provider to find and maintain this information independently.

A single database by the CFPB will help dramatically reduce regulatory burden on remittance transfer providers, especially for smaller credit unions and other smaller entities. Independently, each remittance provider will have great difficulty in obtaining and maintaining such information because the required information has many components that

are unknown and subject to change. Without a central resource, compiling taxes and fees will be incredibly burdensome and costly. Also, credit unions may not have the foreign language resources that are required to interpret fee and tax information available only in a foreign language.

Consumers would benefit from a CFPB database because disclosures will include more consistent and transparent foreign tax and fee information. Without such a database, under the current final rules, consumers will see disclosures that use different estimates – even for the same remittance transfer. Consumers could also benefit because the database could help remittance providers to contain costs, which could in turn help minimize fees since providers would not have to find and maintain foreign tax and fee information.

Liability

We urge the CFPB to clarify that a remittance transfer provider is not liable for ***any*** information provided on a disclosure based on another source permitted by the rule or official commentary, such as another financial institution's fee schedule. Credit unions do not have the means to verify such information and should be allowed to rely on information provided by other sources identified in the rule or official commentary without having to double check it. We are also concerned that consumers may believe that the remittance provider has some control over the information that is based on another source. For these reasons, we urge the CFPB to amend the official commentary to limit a provider's liability when it relies on another, permissible source.

Sender's Representations

Under the proposal, if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of foreign taxes and fees imposed on the transfer, the provider would be permitted to rely on a sender's representations regarding these variables. CUNA supports this approach. However, we have some concerns about its implementation and compliance. In particular, we are concerned that if the amount received by the recipient differs from what the provider discloses as the amount being sent, the sender may want to challenge the transaction even though the proposed commentary seeks to address this situation. Under the proposed comment 33(a)-9, it would not be an error if the provider relies on certain information provided by the sender and there is a discrepancy between the disclosure and the funds to be received and the actual amount received.

The commentary does not, however, indicate whether a provider may rely on verbal representations from the sender. We believe this should be permissible and the commentary clarified to allow the provider to rely on verbal representations from the sender. We also think that disclosures provided in reliance on representations from the sender, whether in writing or verbal, should provide an option to be labeled as estimates since credit union providers will generally have limited or no means to verify the information provided by the sender.

"Estimated" Label

We believe it may be helpful for remittance transfer providers to have the option to include an "estimated" label on the disclosure if the agency permits the use of sender's representations or estimated fees and tax information from another source. The agency should permit remittance providers to determine where the location of the optional "estimated" label should be.

Fees

Under the proposal, a remittance provider may estimate recipient institution fees by disclosing the highest possible fees that could be imposed on the transfer regarding any unknown variable, as determined by fee schedules or prior transfers, or other reasonable sources of information.

We generally support the option to disclose the highest possible fees that may be incurred or other fee estimates, as this additional flexibility can be helpful to some providers that are able to obtain this fee information.

Credit unions have informed us that information from intermediary or correspondent institutions is often very difficult to obtain, or impossible to obtain because they often do not know which institutions will be utilized through "open networks" to reach the recipient institution. In light of this, we request that the CFPB also permit providers to estimate fees from intermediary or correspondent institutions in addition to recipient institution fees as proposed.

If the agency permits fee schedules to be used on disclosures, we believe that a grace period of one year from the date of transmission is a reasonable timeframe for a remittance provider to rely on a fee schedule. However, as with other sources of fee and tax information, we continue to be concerned that remittance providers would expend significant resources to try to maintain fee schedules and other information from numerous third parties in foreign countries. In addition, we understand that fee schedules are likely to be inaccurate or outdated, and remittance

disclosures that incorporate different fee schedules would likely also be inconsistent among providers.

The proposed rule also permits the use of "other reasonable sources of information" if the remittance provider "cannot" obtain such fee schedules or does not have such information. We ask the agency to clarify that while a remittance provider should take reasonable steps to obtain this information, it should not be expected to expend substantial resources in an effort to obtain such information.

In addition, the proposed commentary provides additional guidance on the types of fees that are "specifically related to a remittance transfer," which may be structured on a flat per-transaction basis, or may be conditioned on other factors. We believe that the agency should limit these fees to fees that are directly imposed on the specific remittance transfer amount. The agency should provide additional, illustrative examples regarding fees that are specifically related to remittance transfers.

Foreign Taxes

Under the proposal, a remittance provider may disclose the maximum possible foreign tax amount with respect to any unknown variable.

We generally agree that providers should have the option to disclose the maximum foreign tax amount regarding any unknown variable. We believe this additional flexibility will be helpful to some providers that are able to obtain foreign tax information.

However, CUNA's member-credit unions have indicated that it is often difficult to find any foreign tax information at all for certain countries, including the maximum amount. In this connection, we urge the agency to establish a central database that we discuss below to assist credit unions and others meet their compliance responsibilities in the most efficient way.

We also ask the agency to clarify what "unknown variable" means and to provide some additional examples.

Remittance Providers Should Not Be Liable for Errors Resulting from Incorrect Information Provided by Senders

Under the proposal, if the remittance provider can demonstrate that the consumer provided an incorrect account number, the provider must attempt to recover the funds that are deposited into another recipient institution but would not be liable for the funds if such efforts were unsuccessful.

We agree that it can be incredibly difficult, if not impossible, to recover funds that were sent based on incorrect information provided by the consumer sender. Credit unions currently work with their members to attempt to recover funds that were sent based on incorrect information provided by their members. As one of our members noted this week in an example, "it took over a month of calling a bank that does not have to abide by our laws to recover the funds. We actually had (credit union) employees calling this bank after midnight EST." To attempt to recover funds, a credit union would have to locate the foreign institution, identify the appropriate contact(s), and speak an appropriate foreign language. A credit union in the U.S. simply is not able to control if and how the foreign institution, which is not subject to this CFPB regulation, will respond.

We urge the CFPB to amend the commentary to provide that the remittance transfer provider not be liable if <u>any</u> type of incorrect information (including account numbers or financial institution routing / identification numbers) provided by the consumer sender results in the non-delivery or mis-delivery of funds, as long as the sender receives notice and the provider makes a reasonable attempt to recover the funds. Also, we ask the agency to clarify that the proposed exception would apply in situations where a remittance provider is not able to determine whether funds have been received or credited.

Further, under the proposal, the agency would revise the existing remedy procedures in situations where a sender provides incorrect or insufficient information other than an incorrect account number to allow providers additional flexibility when resending funds at a new exchange rate (on the date of the resend). The proposal would permit providers to provide oral or written streamlined disclosures for the resend. While we agree with the intent to provide streamlined disclosures, we are concerned about the additional compliance costs and operational challenges, because this proposed resend approach would require a separate, new disclosure and additional technical and systems modifications, as well as training. We recommend that the agency provide additional compliance resources to assist remittance providers with implementing these changes if they are adopted.

CFPB Should Clarify Disclosure of Foreign National Taxes

Under the proposal, a remittance provider would disclose foreign taxes imposed on remittance transfers at the national level by the central government, and would not have to disclose taxes that may be imposed by regional, state, provincial, or local level jurisdictions.

We appreciate this improvement as obtaining regional, state, provincial, or local level taxes is extremely difficult, and such information should not be required on the disclosures.

Even for national taxes there are significant challenges to obtain and maintain information for all foreign countries that remittances may be sent to. We believe the CFPB is in the best position to provide remittance providers with a centralized database of foreign national tax information.

If the agency proceeds with the proposed rule, we ask the CFPB to clarify which entities are considered "central governments" because we understand this is not always clear in foreign countries that may have taxes imposed by different entities.

On the proposed disclosure, we would support a simple statement such as "additional taxes by foreign regional and/or local governments may apply," which would facilitate disclosures and the remittance transfer process.

CFPB Should Provide a Delayed Compliance Date of At Least 12 Months

Finally, as discussed in our January 15, 2013 comment letter to the CFPB, we urge the agency to utilize its statutory discretion, as the agency empowered to regulate in this area, and postpone the effective date of the final rule for at least 12 months from the finalization of this proposed rule. This approach will help facilitate compliance for credit unions, particularly those that work with corporate credit unions, vendors, and other third-parties, while minimizing regulatory burdens on all credit unions.

Thank you for consideration of our concerns and of credit unions' need for additional flexibility to comply with the regulation. If you have any questions about our letter, please do not hesitate to contact CUNA Regulatory Counsel Dennis Tsang or me at (202) 508-6736.

Sincerely,

Mary Mitchell Dunn
CUNA Senior Vice President and Deputy General Counsel

Cc: Small Business Administration Office of Advocacy