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CUNA

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Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding Potential Regulatory Changes to the Remittance Rule; Docket No. CFPB-2019-0018

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. On behalf of our members, we are writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) Request for Information (RFI)[1] on potential changes to its rulemaking related to remittance transfers (the Remittance Rule or the Rule).

General Comments

The Remittance Rule[2], finalized in February 2012, created enhanced consumer protection requirements for certain covered international transfers including specified disclosures, mandatory cancellation periods, and error resolution standards. Later that year, the Bureau amended[3] its rule to create a safe harbor for entities that conduct 100 or fewer remittance transfers in each of the prior and the current calendar years. The safe harbor was intended to exempt small entities, such as credit unions, that offer remittances merely as a convenience to their members. Despite the Bureau's well-intentioned efforts, the current "normal course of business" threshold has not proven to be robust enough to prevent numerous credit unions from substantially limiting or ceasing to offer remittance services to their members. As the October 2018 Remittance Rule Assessment Report[4] highlighted, the Rule's costs and compliance challenges themselves have had a measurable impact on the availability of remittances at small financial institutions.

We appreciate the Bureau's consideration of potential revisions to the Remittance Rule and support the leadership in its goal to issue right-sized regulations after soliciting meaningful stakeholder feedback. While CUNA supports appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures, we believe the Bureau should propose and finalize substantive amendments to the Remittance Rule to better balance

[1] Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, 84 Fed. Reg. 17971 (April 29, 2019).
[2] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012).
[3] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 50243 (Aug. 20, 2012).
[4] Remittance Rule Assessment Report (October 2018) *available at* https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/.

consumer protections with a tailored regulation that allows consumers' access to desired products and services.[5] In this case, the Bureau should make three key revisions in the Rule:

1) Increase the "normal course of business" threshold from 100 to at least 1,000 remittance transfers in each of the prior and the current calendar years;
2) Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period;
3) Urge Congress to make permanent the temporary fee estimates exemption and explore alternative options to allow fee estimates for remittances sent over open-networks.

Historically, depending on a credit union's field-of-membership, remittance services are a significant and popular service offered to members. Consistent with CUNA's previous comments on this issue, we continue to believe the Remittance Rule, as it currently stands, is a barrier for the nation's 115 million credit union members in obtaining this important service.

Background

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[6] amended the Electronic Fund Transfer Act (EFTA), establishing a new system of consumer protections for international remittance transfers. The Dodd-Frank Act also granted the CFPB authority to issue rules and regulations related to remittance transfers. The Bureau issued a final rule titled "Electronic Fund Transfers (Regulation E)" in February 2012, establishing regulatory standards to implement the statute. This regulation was subsequently amended on several occasions, including both technical corrections and substantive changes.

In its rule, the CFPB established enhanced requirements on "remittance transfer providers" conducting remittances as part of the "normal course of business." The Rule states that "normal course of business" is determined by the facts and circumstances. However, to make the distinction clear, the Bureau established a safe harbor that exempts providers that conduct fewer than 100 transfers in both the previous and current calendar years from the mandatory requirements.

In general, the Remittances Rule requires all amounts disclosed to a consumer to be exact. However, the amended EFTA provides two exemptions to this general disclosure requirement, a "temporary" exemption and a "permanent exemption." The temporary exemption permits – in certain circumstances – an insured depository institution to estimate the exchange rate, back-end fees, taxes, and total funds to be received. This safe harbor is statutory and the CFPB is authorized to extend this temporary exemption to July 21, 2020, but no further.

Both provisions described above are the subject of the current RFI. CUNA has had concerns regarding remittance regulation since a rule was first considered by the Federal Reserve Board. Since that time, CUNA's position has not changed: we continue to believe remittances are an important member service and we support *appropriate and tailored* safeguards for consumers initiating remittances. The Remittance Rule, as it stands, must be amended to reduce the overall cost of compliance and ensure consumers have access to remittance services from their local credit union.

[5] CUNA's official policy on international fund transfers reads in part, "International fund transfers, including remittances, are important services for consumers, including in underserved communities, and CUNA supports initiatives to increase access to international fund transfer services."
[6] Pub. L. No. 111–203, 124 Stat. 1376 (2010).

The Remittance Rule Is Limiting Consumers' Options

CUNA acknowledges that the Remittance Rule has provided additional protections for vulnerable consumers, particularly in the context of remittance services provided by non- depository entities. However, based on feedback we received from our members, the Rule has also resulted in decreased availability of remittance services at credit unions and increased cost of remittance transfers paid by consumers when the service is available. These price increases are largely due to increased expenditures required to bolster a credit union's in-house compliance resources or to contract with outside vendors to offer these services. In addition, the decrease in the number of providers in the market has influenced the pricing of remittance services.

CUNA's outreach to credit unions regarding the Rule's impact has shown consensus that a substantial number of credit unions have left the remittance market due to the compliance resources necessary to offer the service. Previously, CUNA surveyed credit unions on the impact the Remittance Rule. The nearly 500 responding credit unions ranged in asset size from under $5 million to over $10 billion. The results of the survey were not surprising: due primarily to the burden of the Remittance Rule, over half (55%) of responding credit unions that offered remittances sometime during the prior five years have either cut back (27%) or stopped offering them entirely (28%). Specifically, between 2014 and 2016, a total of 131 responding credit unions indicated they decided to cease offering remittance services.

While credit unions with assets of less than $100 million were more likely to have ceased offering the service than their larger counterparts, some of the largest credit unions in the country were among those forced to stop offering remittance services, per the survey. These results are consistent with those received in response to a survey CUNA conducted in June 2014. The results of that survey, which was shared with the Bureau at the time, showed that half of responding credit unions, which ranged from $50 million to over $3 billion in assets, had been forced to reduce or eliminate remittance services due to the Bureau's rule. Further, a quarter of respondents, which ranged from $10 million to over $200 million in assets, were actively limiting the number of remittances they provided annually to remain under the exemption threshold.

Raise the Safe Harbor Threshold From 100 to at Least 1,000 Remittance Transfers

As member-owned, not-for-profit financial cooperatives, credit unions exist to provide credit at competitive rates, and offer services—including remittance transfers—that assist member-owners in meeting their individual financial needs. Credit unions have a tradition of protecting member interests, and CUNA has consistently been a strong proponent of appropriate and meaningful consumer protections.

However, credit unions offer remittance transfers as a convenient member service and do not exist to solely conduct remittance transfers. Thus, credit unions do not charge exorbitant fees or prevent consumers from having reliable information about their transactions. Based on input received from our members, many credit unions price remittance transfers at a rate that merely recoups costs, and, in some cases, they provide remittance services at a loss. The current Rule has forced credit unions to make difficult decisions regarding whether to offer remittance services, and should the Bureau increase the "normal course of business" safe harbor, many of those institutions may be able to once again provide these services to their members.

In a future rulemaking, the Bureau should increase the "normal course of business" threshold. The current threshold is too low to provide a meaningful safe harbor for community-based financial institutions, such as credit unions. The CFPB has the authority to modify the Remittance Rule to alleviate harm caused to consumers, while also maintaining the purpose of the Rule. This objective could be achieved by increasing the 100-transfer safe harbor threshold. While bright-line thresholds are often difficult to pinpoint, CUNA recommends the safe harbor should be available to entities providing at least 1,000 or fewer remittance transfers annually. Raising the threshold to at least 1,000 transfers would satisfy the overall purpose of the Rule by extending its requirements to most remittance transfers. Under the current 100 transfer threshold, 96 percent of all credit union remittance transfers are covered by the Rule. According to CUNA's analysis, increasing the threshold to 1,000 transfers would provide regulatory relief to nearly 300 credit unions while still covering 84 percent of all remittance transfers conducted by credit unions. Our recommended 1,000 transfer threshold would result in a rule better tailored to entities offering remittance services in their "normal course of business."

In addition, the Bureau may want to consider whether a mere transactional threshold provides an adequate distinction between entities conducting remittances in the "normal course of business" versus those that provide them as an accommodation. The Bureau could explore the costs and benefits of establishing a threshold based on the number of individual users of remittance services compared to the institution's overall membership or customer base.

The Bureau has the statutory authority to reconsider the Remittance Rule's "normal course of business" threshold and increase it to a more appropriate level. However, if the Bureau declines to increase the exemption threshold for all entities, then CUNA requests the Bureau invoke its 1022(b) statutory exemption authority to exempt credit unions, in recognition that these institutions did not practice the abuses that necessitated this rule.

Eliminate or Allow a Consumer to Opt-Out of the 30-Minute Cancellation Requirement

The Remittance Rule currently contains a provision that generally provides the consumer a 30-minute window to cancel a remittance transfer orally or in writing and receive a refund for the total amount of the transfer within 3 business days. While consumers may not be required to physically wait at the branch during the cancellation window, the 30-minute delay often inconveniences consumers due to time-delayed processing by the entity conducting the transfer. In addition, the mandated cancellation period not only creates delays, but has created increased programming costs as providers are required to program systems to hold the transaction to account for the regulatory requirement.

In an environment of increasingly instantaneous communication and financial transactions, an arbitrary 30-minute hold due to an inflexible regulation is contrary to both global trends and consumer expectations. For example, the European Union has been increasingly focused on facilitating the development and availability of instant cross-border payments for both consumers and businesses. Meanwhile, a 30-minute hold stands as an example of how the current regulatory framework is causing the United States to fall further behind our international counterparts in the payments space, to the detriment of America's consumers. In addition, the 30-minute waiting period inhibits the availability of real-time pricing as – depending on the international destination of the transfer – currency fluctuations could influence the transfer and affect the amount received.

Furthermore, the Bureau should consider whether the cancellation period is appropriate given the relatively few instances in which consumers exercise this protection. CUNA has received feedback from credit unions stating it is extremely rare for consumers to cancel a transfer during the 30-minute period. Given the low cancellation rate, the significant cost associated with delayed transfers, and the material inconvenience the requirement causes for consumers initiating transfers, it is clear the 30-minute cancellation period has created an undue burden and should be eliminated.

For the above reasons, the Bureau should eliminate the 30-minute cancellation window from the Remittance Rule or amend the Rule to allow a consumer to waive the ability to cancel a remittance transfer within 30-minutes, so they can access a more instantaneous transfer and avoid an unnecessary hold.

Urge Congress to Make Permanent the Temporary Fee Estimates Exemption, and Explore Options to Expand the Permanent Fee Estimates Exemption

As previously highlighted, Section 1073 of the Dodd-Frank Act served as the impetus for creating a regulation governing remittance providers. The statute also included a provision that temporarily exempted insured depository institutions from the general requirement to disclose exact amounts of fees, taxes, and exchange rates. This temporary exemption was scheduled to expire on July 21, 2015, but the CFPB was authorized to extend the exemption for an additional five years. The CFPB issued a rule in August 2014, exercising this authority and extending the exemption until July 21, 2020.

The Dodd-Frank Act permitted this extension if the Bureau determined the exemption's expiration would have a negative effect on the availability of remittances for consumers. Clearly, the Bureau found evidence of such a negative outcome in 2015. CUNA believes the same potential for disruption in consumers' access to remittance services exists today. In the Remittance Rule Assessment Report, the Bureau acknowledged that banks and credit unions are heavily reliant on open network systems in which no institution exerts end-to-end control over a transaction. While open networks are common, they can be opaque systems that provide limited information or transparency to the institution initiating the transfer. In instances where an initiating credit union has limited information, the fee estimates exemption has been a critical and necessary safeguard to running afoul of the Bureau's regulation.

The Assessment Report also highlighted that financial institutions are still using the Rule's temporary exemption. While the percentage of banks using the temporary exception has declined since the Rule took effect, the Bureau found "11.6 percent of banks still report using the temporary exception and do so for 10.2 percent of their remittance transfers."[7] These figures represent 6.4 percent of all bank remittance transfers. Unfortunately, the CFPB's report did not conduct a full study or survey of credit unions using the temporary exemption. CUNA would support the Bureau conducting further study to determine more specific rates of credit unions using the temporary exemption. Until then, based on feedback received by our members, credit unions report that the temporary safe harbor is a critical component of limiting the overall compliance impact of the Rule. CUNA would be concerned if the temporary safe harbor for fee estimates expired without an adequate replacement in place. Given the characteristics of the remittances market, one more compliance obstacle to overcome in offering this service could be one too many and result in more credit unions shutting down their remittances offerings due to the uncertainty surrounding compliance. Permitting the safe harbor to expire without an effort to provide a similar accommodation for insured depository institutions would not be in the best interest of consumers or the entities that serve them.

[7] **Remittance Rule Assessment Report**, pg 6.

CUNA has been strongly supportive of past efforts to maintain the temporary exemption and recommends the Bureau make every effort to work with Congress on this issue. With that goal in mind, credit unions would support the CFPB publicly urging Congress to pass legislation to make permanent the temporary fee estimates safe harbor or, at minimum, extending the safe harbor for a material length of time. In addition, CUNA encourages the Bureau to explore additional methods within its rulemaking authority to expand the rule's permanent fee estimates exemptions to mitigate the impact of the temporary exemption's expiration.

Conclusion

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views regarding necessary amendments to the Remittance Rule. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,

Alexander Monterrubio
Senior Director of Advocacy & Counsel