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CUNA

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January 21, 2020

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

Re: Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E); Docket No. CFPB-2019-0058

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) proposed rule with request for comment[1] on international money transfers (the Remittance Rule or the Rule).

General Comments

The Remittance Rule[2] established enhanced consumer protections for covered international transfers, including a requirement that all fees and exchange rates disclosed to a consumer be exact. However, the Rule also includes a "normal course of business" safe harbor exempting entities that conduct 100 or fewer remittance transfers in each of the prior and the current calendar years. The safe harbor is intended to ease compliance burden on those entities that offer remittance services merely as a convenience. In addition, the Electronic Funds Transfers Act (EFTA) provides two exemptions to the Rule's general disclosure requirement: a "temporary" exemption and a "permanent" exemption. The temporary exemption permits an insured depository institution to *estimate* the exchange rate, back-end fees, taxes, and total funds to be received in certain circumstances. The temporary exemption is statutory and is expected to expire on July 21, 2020.

After conducting its statutorily required rule assessment, the Bureau has proposed to increase the "normal course of business" safe harbor threshold from 100 to 500 transfers annually. The Bureau has also proposed the addition of two permanent exemptions, an exchange rate exemption and a third-party fees exemption, for qualifying entities to mitigate the effects of the expiration of the statutory "fee estimates exception" for depository institutions.

As we have stated previously, CUNA strongly believes the current "normal course of business" threshold is set too low and has resulted in many credit unions limiting or ceasing to offer

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[1] Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E), 84 Fed. Reg. 67132 (December 6, 2019).
[2] Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194 (Feb. 7, 2012).

remittance services to their members. As the Bureau's own Remittance Rule Assessment Report[3] highlighted, the Rule's compliance costs and challenges have had a measurable impact on the availability of remittances at small financial institutions. We appreciate the Bureau's efforts to listen to and address the concerns of credit unions on this issue. The current proposed rule reflects a good faith attempt to remedy the access problems created by the initial Rule and we support the leadership in its goal to issue right-sized regulations.

Credit unions generally support the CFPB's proposal to better balance consumer protections with a tailored regulation that allows consumers' access to desired products and services. However, the Bureau should explore several revisions and additions to the proposed rule:

- Increase the "normal course of business" safe harbor threshold from 500, as proposed, to 1,000 remittance transfers;
- Increase the thresholds for both the proposed exchange rate exemption and third-party fees exemption to 2,000 or fewer transfers to reflect a "normal course of business" safe harbor threshold set at 1,000 transfers, as recommended; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

CUNA continues 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.

The Remittance Rule, Absent a Strong Safe Harbor, Has Limited Consumers' Options

CUNA acknowledges that the Remittance Rule has provided additional protections for consumers, particularly in the context of remittance services provided by non-depository entities. However, based on feedback from credit unions, 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 for 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 that a substantial number of credit unions have left the remittance market due to the compliance resources necessary to continue offering 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.[4]

[3] Remittance Rule Assessment Report (October 2018) *available at* https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/.
[4] Haller, Jon; Ledin, Paul; and Malla, Bandana, Credit Union National Association Impact of CFPB Rules Survey (February 2017).

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. The results of that survey, which was previously shared with the Bureau, 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.

The Bureau Should Raise the Safe Harbor Threshold 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 low-cost services—including remittance transfers—that assist member-owners in meeting their individual financial needs. However, credit unions offer remittance transfers merely 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. In fact, credit unions' low-cost products and services ensure members have more money available to dedicate to savings, pay off debts, or use on necessary day-to-day expenses. These cost savings are a major reason why credit unions are consumers' best option in the financial services space.

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 or not 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.

CUNA, credit union leagues, and individual credit unions have frequently asked the Bureau to substantially increase the "normal course of business" threshold, and we appreciate that the proposed rule would do just that. The Rule's current 100-transfer threshold is far too low to provide a meaningful safe harbor for affected financial institutions. However, although we support the Bureau's proposed increase of the safe harbor threshold to 500-transfers, CUNA recommends the safe harbor be set to at least 1,000 or fewer remittance transfers annually.

Raising the safe harbor threshold to at least 1,000 transfers would satisfy the overall purpose of the Rule by extending its coverage to the largest service providers. Under the current 100 transfer threshold, 96 percent of all credit union remittance transfers are covered by the Rule and must comply with its requirements. 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 that is better tailored to cover entities truly offering remittance services in the "normal course of business."

The Bureau Should Raise the Threshold Criteria to Increase Credit Unions' Access to the Proposed Exchange Rate and Third-Party Fees Exemptions

The Dodd-Frank Act, in amending the EFTA, included a provision that temporarily exempted insured depository institutions from the general requirement to disclose exact amounts of fees, taxes, and exchange rates. The temporary exemption was extended by the CFPB to July 21, 2020, because the Bureau determined the exemption's expiration would have a negative effect on the availability of remittances for consumers. CUNA believes the same potential for disruption in consumers' access to remittance services exists today.

To mitigate the effects of the expiration, the Bureau has proposed the addition of two permanent exemptions: an exchange rate exemption and a third-party fees exemption. Regarding the exchange rate exemption, the Bureau's proposal would permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if the designated recipient will receive funds in the country's local currency and the insured institution *made 1,000 or fewer remittance transfers in the prior calendar year to that country* when the designated recipients received funds in the country's local currency. Regarding the third-party fees exemption, the Bureau's proposal would permit insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated recipient's institution if the insured institution *made 500 or fewer remittance transfers to that designated recipient's institution* in the prior calendar year.

The Bureau's Assessment Report highlighted the importance and continued relevance of the temporary safe harbor. 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."[5] Unfortunately, the CFPB's report did not conduct a full study or survey of affected credit unions so it is possible the number of credit unions using the temporary exemption could be higher. In fact, CUNA's feedback from credit unions indicates that the temporary safe harbor continues to be a critical component of limiting the overall compliance impact of the Rule. CUNA is concerned if the temporary safe harbor expires without an adequate, permanent replacement in place, as the addition of yet another compliance obstacle in providing remittance services could result in more credit unions ceasing to offer these services to their members. If members are unable to access needed products and services from their local credit union, then the risk increases they will turn to less desirable, high-cost alternatives to conduct their financial business.

For that reason, CUNA supports the Bureau's attempt to address the looming lapse of the temporary fee estimates safe harbor. We previously called on the Bureau to explore options to expand the rule's permanent exemptions to mitigate the impact of the temporary exemptions expiration, and the proposed solution is a common-sense method to address credit unions' concerns. However, to align the two permanent exemptions with our recommendation that the Bureau raise the "normal course of business" safe harbor to 1,000 transfers, we recommend the CFPB correspondingly increase both the thresholds required to take advantage of the new permanent exemptions to 2,000 or fewer transfers. In the case of the third-party fees exemption, credit unions are concerned the 500 transfer threshold is too low to properly account for repetitive requests by members to the same institution. Increasing the threshold to 2,000 or fewer transfers would allow credit unions to access the third-party fees exemption and reduce the overall costs of providing remittance services to members. In addition, given the looming expiration of the statutory safe harbor, CUNA respectfully request the Bureau act quickly to finalize the two proposed exemptions well in advance of the July 2020 deadline.

The Bureau Should Eliminate the 30-Minute Cancellation Requirement or Allow a Consumer to Opt-Out

While not included in the Bureau's proposal, CUNA has received feedback from credit unions that the 30-minute cancellation period requirement is unreasonable and creates friction in the

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[5] Remittance Rule Assessment Report, pg. 6.

remittance transfer process. 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 inconveniences consumers due to time-delayed processing by the entity conducting the transfer. 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 consumers initiating transfers, it is clear the 30-minute cancellation period has created an undue burden and should be eliminated. To reiterate, CUNA strongly recommends the Bureau eliminate the 30-minute cancellation requirement or provide consumers with the ability to opt-out of the mandatory waiting period.

Conclusion

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views on the Bureau's proposed 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