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National Association of Federally-Insured Credit Unions

January 21, 2020

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Remittance Transfers Under the Electronic Fund Transfer Act

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (Bureau) proposed amendments to the Remittance Rule under the *Electronic Fund Transfer Act* (EFTA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. NAFCU welcomes the Bureau's decision to propose additional relief for credit union remittance providers by adjusting the rule's "normal course of business" safe harbor threshold from 100 to 500 transfers in the current and previous years. While we think the threshold should be set higher, it is a step in the right direction.

We also support the Bureau's effort to mitigate the expiration of the Remittance Rule's temporary exception for providing estimates of fee and exchange rate amounts; however, we believe that the proposed solution can be improved. In general, NAFCU regards the proposed amendments as positive, but believes that the Bureau should expand and simplify its proposal to provide credit unions greater flexibility to ensure that remittance services remain affordable and accessible.

General Comments

Credit unions have incurred significant costs to comply with the Remittance Rule's complex disclosure requirements and error resolution framework, and many NAFCU members have reported that they ceased offering remittances as a result. In January 2013, a NAFCU survey revealed that over a quarter of credit union respondents planned to discontinue remittance services due to elevated compliance costs. In 2014, a third of NAFCU survey respondents indicated that they had, in fact, ceased offering these services, and a quarter said they would either re-enter the market or process more remittances if the current, 100-transfer safe harbor threshold was raised.

Despite the negative impact of the Bureau's rule on the market for credit union remittances, a substantial contingent of credit unions continue to offer remittance transfers at cost because their membership demands access to this critical service. But this practice may be harming long-term efforts to allocate resources appropriately and could impair future investments in member service.

As smaller institutions, credit unions' ability to absorb regulatory costs is limited. According to the Bureau's Remittance Rule Assessment Report (the Assessment), the median asset size of credit unions transferring more than 100 remittances annually was only $154 million in 2017.[1] For banks, the comparable figure was $1.58 billion.[2] When credit unions choose to provide remittances, burdens such as knowing when IBANs are required, identifying proper international addresses or country-specific formatting, and supplying OFAC information present extraneous challenges that leave little margin for additional cost pressure. Accordingly, NAFCU asks that the Bureau consider exempting all credit unions from the requirements of the Remittance Rule given its dubious benefits and measurable burdens in an industry that accounts for less than a percent of total remittance volume.[3]

Relief from the Remittance Rule is also necessary to cultivate a competitive market for remittance services, rather than one where only the largest and most technologically sophisticated institutions can afford to comply with complex rules. While we generally support the contents of the current proposal, we encourage the Bureau to consider all options for relief, including an industry-wide exemption under the authority granted in Section 1022(b) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

The Bureau Should Raise the Safe Harbor Threshold to 1,000 Transfers

Credit unions have struggled with the Remittance Rule because its disclosure requirements add more administrative duties for specialized staff and increase the time it takes to process individual wire transfers. The disclosures also extend the time required for the entire remittance process affecting both the credit union and the member. NAFCU has heard that credit union members are often dissatisfied with the remittance process because of these disclosure requirements and will frequently request an explanation of the disclosures and associated delays to their remittance request. Increasing the safe harbor threshold would help credit unions improve member satisfaction with remittance services, reduce regulatory costs, and likely persuade some credit unions to reenter the market for remittances.

NAFCU recommends increasing the Remittance Rule's safe harbor threshold from its current level of 100 transfers in the current and previous calendar year to at least 1,000. Adjusting the threshold to 1,000 transfers would have a minimal impact on the total volume of remittances covered by the rule. The Assessment observed that in 2017, credit unions transferring 1,000 or fewer remittances accounted for only 13 percent of all transfers by credit unions.[4] Over the twelve months ending September 30, 2019, credit unions that transferred 1,000 or fewer remittances provided 11% of all transfers by credit unions. Accordingly, adjusting the threshold as NAFCU proposes would mean that the vast majority of remittances made by credit unions would still be covered by the rule.

Increasing the threshold would also be appropriate given that 56 percent of credit unions surveyed by NAFCU in May 2019 said that the Bureau's regulations have made remittance transfer services more expensive to offer. In addition, a higher threshold would provide critical relief to credit

[1] CFPB, Remittance Rule Assessment Report, 82 (October 2018) *https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf*
[2] *Id*. at 74.
[3] *Id*. at 64.
[4] *Id*. at 83.

unions who are not providing remittance services at a profit, but rather as a key service for their membership. As explained in the 2012 Remittance Rule, whether an institution provides remittances in the normal course of business depends on the facts and circumstances—a complex consideration that ultimately drove adoption of a simplified safe harbor threshold.[5] Yet for those credit unions earning little or no income on remittance transfers, it remains unreasonable to characterize remittance services as part of the normal course of business.

While the Bureau has expressed some uncertainty regarding credit unions exiting the remittance market due to compliance burdens, it is important to note that this conclusion may be based on limited data. In its Assessment, the Bureau notes that pre-rule versus post-rule remittance levels are difficult to determine because of the absence of detailed call report data. While the NCUA Call Report did ask a question in 2009 about whether credit unions "currently offer, or plan to offer in the next six months "cross-border person-to-person payments of relatively low value," this question did not capture the volume of remittance transfers. Call report data capturing volume information was only available beginning in the second quarter of 2013—less than a year before the Remittance Rule was to take effect.

NAFCU believes, based on survey data, that many credit unions that chose to discontinue remittance services because of the Remittance Rule did so at the end of 2012 (or early 2013), since the rule's original effective date was February 2013. It wasn't until January 29, 2013 that the Bureau announced that it would be delay the rule until October that year. Consequently, NAFCU has a different assessment about the degree to which the 2012 final rule prompted credit unions to exit the market for remittance services; relevant data was collected only after most departures would have logically occurred.

Alternative Exception for Providing Estimates

The Remittance Rule currently requires a remittance provider to disclose to the sender certain information about the transfer in advance. This information generally includes the amount that will be transferred to the designated recipient, any fees imposed, any taxes collected on the transfer by the provider, the total amount of the transaction, the exchange rate used by the provider, and other covered third-party fees. The temporary exception allows a credit union to use estimates for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii) if certain conditions are met. Because the temporary exception will expire on July 21, 2020, NAFCU generally supports the Bureau's proposal to mitigate its loss using alternative mechanisms. However, additional relief is needed to avoid significant disruption for credit unions that process a large volume of remittances relative to their size.

The proposal would permit estimates of the exchange rate for a remittance transfer to a particular country if, among other things, 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. With respect to covered third-party fees, the Bureau would permit estimates of covered third-party

[5] CFPB, Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194, 6213 (Feb. 7, 2012).

fees for a remittance transfer to a particular designated recipient's institution if, among other things, the insured institution made 500 or fewer remittance transfers to the designated institution in the prior calendar year. These alternatives to the exception are not as robust as NAFCU would prefer, but they do provide short-term relief.

In a NAFCU survey conducted in June 2019, 11 percent of credit union respondents said that the principle reason they were not offering remittance services was because of the expiration of the temporary exception. In other words, some credit unions have already stopped providing remittances because they are dependent on the ability to estimate fee and exchange rate information. Although this may be a small proportion, it is nonetheless significant and likely indicative of an even higher degree of reliance among credit unions that are currently providing remittances. Other NAFCU surveys suggest that the share of credit unions relying on estimates for prepayment disclosures may be higher than what the Bureau has suggested using limited data[6]—perhaps close to 15 percent. Consequently, the proposal to accommodate estimates on a quota basis alleviates some pressure, but it does not fully address larger dependencies that exist due to credit union reliance on open networks.

As proposed, the threshold for providing estimates of third-party fees will likely be insufficient for certain credit unions with international or student-based fields of membership. Some of these credit unions are too small to maintain correspondent relationships with a large number of recipient institutions but virtually certain to exceed the 500 transfer limit for estimating fees. Once the threshold is exceeded, a credit union would have few alternative options to continue providing remittances without expensive operational changes, which one credit union with more than $5 billion in assets characterized as likely to result in a negative return on investment. These changes would be necessary because proposed comment 1005.32(b)(5)—1 explains that third-party fees cannot be determined exactly when an "insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution." The circumstances described in comment 1005.32(b)(5)—1 represent what are often unavoidable limitations in an open network; maintaining correspondent relationships with every possible intermediary or numerous direct accounts with foreign recipients are impractical solutions for the vast majority of credit unions.

Accordingly, NAFCU recommends that the Bureau consider a simplified exception that treats a sending institution's reliance on fee or exchange rate amounts provided by a correspondent as sufficient for disclosure purposes. The Bureau should also consider a higher threshold (at least 2,000) for estimates of both exchange rate and third-party fee amounts. At the very least, these thresholds should mirror each other, which would be easier to implement from an operational perspective because the adoption of differing thresholds on a per member basis could introduce complicated tracking issues. Many credit unions are only breaking even on their remittance services and additional software upgrades to facilitate continued use of the exception may not be

[6] According to the Assessment, only 17 credit unions were able to respond to an industry survey administered by the Bureau in Spring 2018 that asked questions about the temporary exception. See CFPB, Remittance Rule Assessment Report, 138-141.

worth the cost. Even if a credit union does not bear such costs directly, it could still face higher fees from domestic correspondents if these institutions must now report exact amounts for non-exempt transfers.

The Bureau should also commit to revisiting the sufficiency of whatever threshold is ultimately adopted shortly after implementation of a final rule to ensure that costs borne by correspondents ineligible to use estimates are not passed on to community institutions that do not themselves exceed the thresholds.

Finally, NAFCU recommends that the Bureau consider liberal use of the country-list exception for estimates, which is permitted under § 919(c) of the EFTA. Section 919(c) allows the Bureau to modify its regulations if it determines that "a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient." As NAFCU has commented previously, we believe the prevailing *method* used to conduct remittances in nearly all countries involves an open network, which meets the conditions described in § 919(c) because decentralization places limits on the ability to obtain accurate fee and exchange rate information in advance. Given these structural limitations and the inherent uncertainty of relying on intermediaries in an open-network, NAFCU urges the Bureau to propose new regulations that would allow credit unions to continue to rely on estimates when providing fee and exchange rate information in any country that relies primarily on an open network for remittance transfers. Whether an open network is the primary method for conducting remittance transfers in a particular country might be determined by surveying the extent to which foreign lifting fees are known before or after a remittance is sent by U.S. depository institutions to that country.

Conclusion

Given the substantial burdens experienced by credit unions subject to the Remittance Rule, NAFCU urges the Bureau to adopt a more appropriate safe harbor of 1,000 transfers in the prior and current year. As the Bureau itself acknowledges, institutions that provide "relatively small numbers of remittance transfers have fewer transactions to produce revenues through which to recover the fixed compliance costs associated with the Rule."[7] For the vast majority of credit unions, offering fewer than 1,000 transfers in a given year will not be sufficient to generate meaningful income, and fixed costs will continue to exert pressure on those that are reluctant to pass compliance and fee expenses on to members. For smaller credit unions, these costs can be significant, and some have indicated to the Bureau that if they were to exceed the current safe harbor threshold, they would cease offering remittances altogether. For these reasons, a higher threshold is needed.

The Assessment also acknowledges that the Remittance Rule has not directly improved the affordability of remittances, that transfer-related errors are rarely asserted by consumers, and complaints regarding international wires account for only 0.4 percent of all complaints received

[7] CFPB, Request for Information Regarding Potential Regulatory Changes to the Remittance Rule, 84 Fed. Reg. 17971, 17975 (April 29, 2019).

by the Bureau to date.[8] Based on this evidence, the rule does not appear to have meaningfully enhanced competition and consumer choice. Instead, it has driven consolidation—or at least flattening[9]—of remittance transfer providers while increasing costs for credit unions and their member-owners. Accordingly, the Bureau should adopt a simplified mechanism for allowing the continued use of estimates since its current availability has not had any detrimental impact on consumers. A streamlined or enhanced exception for providing estimates would help small credit unions avoid significant and costly operational changes that could negatively impact the availability of affordable and easy to use remittance services.

NAFCU appreciates the opportunity to comment on the Bureau's proposed amendments to the Remittance Rule. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2266 or amorris@nafcu.org.

Sincerely,

Andrew Morris
Senior Counsel for Research and Policy

[8] *See* Assessment at 4, 6, 114. The Assessment includes the observation that the "average price of remittances was declining before the Rule took effect and has continued to do so" and "[t]he available evidence cannot rule out the possibility that prices would have fallen even faster in the absence of the Rule."
[9] *Id*. at 86.